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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

177

JILL STEIN, ET AL : CIVIL CASE NUMBER
PLAINTIFFS :
VERSUS : 16-6287
PEDRO A. CORTES, ET AL, :
DEFENDANTS :

ORIGINAL

FEBRUARY 21, 2020
COURTROOM 14A
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE PAUL S. DIAMOND, J.

EVIDENTIARY HEARING - DAY 3

APPEARANCES:

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KATE E. BROWN, Clerk
By: [Signature] Dep. Clerk

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JG

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21

22

23

24

25

1 (CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING, EVERYBODY,
3 PLEASE BE SEATED.

4 ALL COUNSEL: GOOD MORNING, YOUR HONOR.

5 THE COURT: SHALL WE CONTINUE WITH THE
6 COMMISSIONER? I SEE SHE IS HERE.

7 MS. WALSH: YES.

8 THE COURT: OKAY.

9 THE WITNESS: GOOD MORNING.

10 THE COURT: WELCOME BACK, COMMISSIONER.
11 YOU ARE STILL UNDER OATH.

12 MS. WALSH.

13 MS. WALSH: MAY I PROCEED, YOUR HONOR?

14 THE COURT: YES.

15 DO YOU HAVE ANY ADDITIONAL QUESTIONS YOU
16 WANTED TO ASK HER BEFORE I TURN HER OVER TO MS. WALSH?

17 MR. LIEB: NO, JUDGE, I THINK MY DIRECT
18 IS COMPLETED.

19 THE COURT: OKAY.

20 MS. WALSH.

21 MS. WALSH: THANK YOU.

22 CROSS-EXAMINATION

23 BY MS. WALSH:

24 Q. AND GOOD MORNING, COMMISSIONER.

25 A. GOOD MORNING.

1 Q. COMMISSIONER, CAN YOU EXPLAIN TO THE COURT A
2 LITTLE BIT ABOUT HOW CONTRACTS FOR SUPPLIES AND
3 EQUIPMENT ARE GENERALLY AWARDED IN THE CITY OF
4 PHILADELPHIA?

5 A. SO THERE ARE -- THERE IS AN INFORMAL PROCESS FOR
6 PURCHASES THAT ARE UNDER 34,000, A SMALL ORDER PURCHASE.
7 AND THEN ANYTHING OVER 34,000 IS TYPICALLY DONE EITHER
8 THROUGH A SEALED BID, WHICH IS A COMPETITIVE PROCESS, OR
9 THE BEST VALUE METHOD, WHICH IS A NONCOMPETITIVE
10 PROCESS.

11 Q. NOW COMMISSIONER, HYPOTHETICALLY, IF THE CITY OF
12 PHILADELPHIA WERE TO PROCURE A NEW VOTING SYSTEM, WHAT
13 WOULD THE PROCUREMENT DEPARTMENT RECOMMEND FOR THE
14 METHOD OF PROCURING THAT SYSTEM?

15 A. WE WOULD RECOMMEND THE BEST VALUE METHOD.

16 Q. CAN YOU TELL US A LITTLE BIT ABOUT WHAT THE BEST
17 VALUE METHOD OF PROCUREMENT IS?

18 A. BEST VALUE IS BASICALLY A PHASED APPROACH, FIRST
19 PHASE BEING FIGURING OUT WHAT THE MARKET HAS TO OFFER.
20 SECOND PHASE BEING EVALUATING -- REVIEWING AND
21 EVALUATING THE PROPOSALS THAT COME IN. AND THIRD PHASE
22 PRETTY MUCH BEING THE CONTRACT NEGOTIATION.

23 Q. AND COMMISSIONER, HOW IS THAT DIFFERENT THAN THE
24 SEALED COMPETITIVE PROCESS THAT YOU JUST EXPLAINED TO
25 THE JUDGE?

1 A. A SEALED COMPETITIVE PROCESS IS AWARDED TO THE
2 LOWEST BIDDER. BEST VALUE ALLOWS THE CITY TO AWARD AND
3 REVIEW PROPOSALS BASED ON MORE TECHNICAL REQUIREMENTS OR
4 QUALITATIVE COMPONENTS, AND THEN PRICING IS SCORED
5 SEPARATELY. SO BEST VALUE ALLOWS US TO AWARD NOT SOLELY
6 BASED ON PRICE.

7 Q. COMMISSIONER, WHY WOULD YOU RECOMMEND THE BEST
8 VALUE PROCUREMENT FOR VOTING SYSTEMS?

9 A. THE VOTING SYSTEM IS A COMPLEX PURCHASE. IT IS
10 A MULTIFACETED PURCHASE. THE IMPACT THAT IT HAS TO THE
11 CITY IS GREATER THAN A TYPICAL SEALED BID FOR TIRES OR
12 TRASH TRUCKS. WE WOULD LOOK FOR SOMETHING THAT WOULD
13 ALLOW US AGAIN TO REVIEW TECHNICAL REQUIREMENTS. WE
14 WOULD BE ABLE TO EVALUATE BASED ON A WEIGHTED SCORE FOR
15 SPECIFIC TECHNICAL REQUIREMENTS THAT ARE LAID OUT IN THE
16 RFP AS OPPOSED TO A SEALED BID, AGAIN, WHERE WE ARE JUST
17 LOOKING FOR THE LOWEST PRICE, WHICH DOESN'T ALWAYS --
18 MAYBE DOESN'T ALWAYS YIELD US THE BEST OPTION. THE BEST
19 VALUE ALLOWS US TO LOOK FOR THE BEST OPTION AS TO FIT
20 THE CITY'S NEEDS.

21 Q. NOW, COMMISSIONER, YOU EXPLAINED THAT THERE ARE
22 MULTI-PHASES OF THE BEST VALUE PROCUREMENT PROCESS. I
23 WANT TO TURN YOUR ATTENTION TO WHAT YOU IDENTIFIED AS
24 PHASE ONE. CAN YOU TELL THE COURT WHAT GOES INTO
25 DETERMINING WHAT OPTIONS ARE AVAILABLE AND WHAT IS OUT

1 THERE ON THE MARKET?

2 A. INITIALLY, WE COULD ISSUE AN RFI. THE RFI IS A
3 REQUEST FOR INFORMATION. IT ALLOWS PROPOSERS TO SUBMIT
4 PROPOSALS TO THE CITY, JUST BASIC PROPOSALS INDICATING
5 WHAT THEIR, IN THIS CASE, VOTING MACHINES ENTAIL. AND
6 IT ALLOWS US TO FIGURE OUT WHICH -- AFTER REVIEWING THE
7 PROPOSALS, HOW WE COULD CRAFT AN RFP THAT IS DRIVEN TO
8 MEET THE CITY'S NEEDS.

9 Q. AND IN THE EVENT THAT YOU WERE TO PROCURE A NEW
10 VOTING SYSTEM, HOW LONG WOULD YOU APPROXIMATE THE
11 DRAFTING AN RFI WOULD BE?

12 A. DRAFTING AN RFI MAY TAKE 30 DAYS.

13 Q. AND ONCE THAT RFI IS DRAFTED, WHAT HAPPENS AT
14 THAT POINT?

15 A. AGAIN, THE RFI IS EVALUATED, THE INFORMATION IS
16 REVIEWED AND IT HELPS TO CRAFT THE RFP.

17 Q. AND WHAT DO YOU DO WITH THE RFI?

18 A. ONCE THE RFI COMES IN?

19 Q. YES.

20 A. IT IS REVIEWED BY A NUMBER OF -- IT COULD BE
21 REVIEWED BY A NUMBER OF DEPARTMENTS. IN THIS CASE, IT
22 WOULD CERTAINLY BE REVIEWED BY OUR OFFICE OF INNOVATION
23 AND TECHNOLOGY AS WELL AS THE CITY COMMISSIONER'S
24 OFFICE. THERE COULD BE A REVIEW BY A NUMBER OF OTHER
25 OFFICES THAT HAVE AN INTEREST.

1 Q. AND AT SOME POINT DOES THAT RFI GET POSTED
2 ANYWHERE?

3 A. THE RFP IS POSTED. THE RFI IS POSTED ONCE IT'S
4 DRAFTED PUBLICLY TO SOLICIT THE PROPOSALS, AND THEN IT
5 IS REVIEWED. IT DRIVES THE RFP PROCESS. THE RFP
6 DRAFTING, EXCUSE ME. AND THEN THE RFP IS POSTED FOR 30
7 DAYS, ROUGHLY.

8 Q. AND WHAT HAPPENS AFTER THE RFP IS POSTED FOR THE
9 30 DAYS?

10 A. ONCE THE RFP IS POSTED, THE BID, IF YOU WILL, IS
11 CLOSED, AND THE PROPOSALS COME IN. THEY ARE DISTRIBUTED
12 TO A SELECTION COMMITTEE WHO HAS SIGNED OFF ON
13 CONFIDENTIALITY AND CONFLICT OF INTEREST FORMS. AND THE
14 REVIEW PROCESS FOR THAT SELECTION COMMITTEE BEGINS.

15 Q. NOW, COMMISSIONER, YOU TESTIFIED THAT THE RFP IS
16 POSTED FOR APPROXIMATELY 30 DAYS. HOW LONG IS THE RFI
17 POSTED BEFORE THE RFP GETS POSTED?

18 A. AN RFI CAN ALSO BE POSTED FOR 30 DAYS.

19 Q. AND HOW LONG DOES IT TYPICALLY TAKE TO DRAFT THE
20 RFP FROM THE INFORMATION YOU SOLICIT FROM THE RFI?

21 A. IT VARIES. FOR SOMETHING LIKE THIS IT COULD
22 TAKE TWO MONTHS. THERE ARE LEVELS OF APPROVAL. AGAIN,
23 ONCE THE -- BEFORE -- EXCUSE ME -- PRIOR TO THE RFP
24 BEING POSTED, ONCE IT'S DRAFTED. THERE ARE SEVERAL
25 OFFICES THAT WOULD NEED TO REVIEW IT AND APPROVE.

1 Q. SO COMMISSIONER, THIS ENTIRE -- OR THIS PHASE
2 ONE, WHERE YOU ARE TALKING ABOUT THE RFI AND RFP
3 PROCESS. APPROXIMATELY HOW LONG WOULD YOU ESTIMATE IT
4 WOULD TAKE TO PROCURE NEW VOTING -- OR FOR THAT PHASE OF
5 PROCURING A NEW VOTING SYSTEM?

6 A. THE RFI AND RFP, JUST THE DRAFTING PROCESS?

7 Q. THE WHOLE DRAFTING POSTING.

8 A. AND POSTING PROCESS COULD TAKE I WOULD SAY
9 ANYWHERE FROM THREE TO POSSIBLY FIVE MONTHS.

10 Q. NOW, COMMISSIONER, I WANT TO TURN YOUR ATTENTION
11 TO WHAT YOU IDENTIFIED AS PHASE TWO OF THE BEST VALUE
12 PROCUREMENT PROCESS WHERE THE CITY NEEDS TO SELECT WHICH
13 OPTION THEY ARE GOING WITH. CAN YOU TELL THE COURT A
14 LITTLE BIT ABOUT WHAT STEPS GO INTO THAT SELECTION
15 PROCESS?

16 A. SO THERE'S A SELECTION COMMITTEE THAT IS AN ODD
17 NUMBER OF MEMBERS. MULTIPLE OFFICES, AGAIN, ARE
18 INVOLVED, THOSE OFFICES THAT HAVE AN INTEREST, INCLUDING
19 OUR OFFICE OF ECONOMIC OPPORTUNITY. THE PROCUREMENT
20 DEPARTMENT CAN HAVE A REPRESENTATIVE THAT IS TYPICALLY A
21 NONVOTING MEMBER. WE ALSO COULD HAVE, AGAIN, THE OFFICE
22 OF INNOVATION AND TECHNOLOGY, OIT, CITY COMMISSIONERS,
23 AND THERE COULD BE A FEW OTHER OFFICES THAT MAY BE --
24 ELECT TO HAVE SOMEONE ON THE SELECTION COMMITTEE.

25 THE RFPS ARE -- THE PROPOSALS, EXCUSE ME,

1 ARE DISSEMINATED TO THAT GROUP. THEY REVIEW THEM
2 INDEPENDENTLY, THEY SCORE INDEPENDENTLY, AND THEN THEY
3 WILL COME TOGETHER TO MEET AND DISCUSS WHAT THEY HAVE
4 REVIEWED AND SCORED.

5 BASED ON THAT DISCUSSION, THEY CAN
6 DETERMINE IF THEY -- SAY IF WE RECEIVED SIX PROPOSALS.
7 AND IF THEY DETERMINE OF THAT SIX THEY WOULD LIKE TO
8 NARROW DOWN IT TO POSSIBLY THREE FOR WHATEVER REASON,
9 THROUGH, YOU KNOW, THE SCORING PROCESS OR THROUGH THEIR
10 DISCUSSION THEY'D LIKE TO BRING THREE POTENTIAL
11 CANDIDATES IN FOR A DEMONSTRATION.

12 ONCE THEY HAVE THE -- YOU KNOW, THEY
13 ARRANGE FOR THE DEMONSTRATION. THEN THEY -- OF COURSE,
14 THE CANDIDATES COME IN, IT'S SCORED AGAIN. ALL OF THE
15 SELECTION COMMITTEE MEMBERS HAVE AN OPPORTUNITY TO THEN
16 SCORE AGAIN INDEPENDENTLY. THEN THEY CAN MEET AGAIN AND
17 HAVE A CONVERSATION. AND THAT CAN GO ON, IN TERMS OF
18 THEM MEETING AND DISCUSSING, UNTIL THE MEMBERS ARE
19 COMFORTABLE WITH WHAT THEY HAVE REVIEWED AND SCORED.

20 Q. NOW, COMMISSIONER, JUST FOR CLARIFICATION, IS
21 THIS ALL STILL -- ARE WE TALKING ABOUT TECHNICAL SCORING
22 OR ARE WE TALKING ABOUT PRICE SCORING?

23 A. YES, THIS IS TECHNICAL. SO THE PRICING IS
24 SCORED SEPARATELY. TECHNICAL IS SCORED FIRST. ONCE THE
25 TECHNICAL SCORES ARE FIRMED UP, THEN THE COST PROPOSALS

1 OF PRICING IS INTRODUCED.

2 Q. AND WHAT HAPPENS WITH THE SELECTION COMMITTEE
3 AFTER THE COST PROPOSALS ARE INTRODUCED?

4 A. ONCE THE COST PROPOSAL IS INTRODUCED, WE CAN
5 APPROACH TOP CANDIDATES FOR BEST AND FINAL OFFER. AND
6 THAT IS A SERIES OF CONVERSATIONS THAT CAN TAKE PLACE
7 BETWEEN THE -- OFTENTIMES IT'S THE CHAIRPERSON OF THE
8 SELECTION COMMITTEE ALONG WITH A MEMBER OF THE
9 PROCUREMENT DEPARTMENT SUPPORTING AND MAKING SURE AGAIN
10 THAT THE PROCESS IS COMPLIANT.

11 Q. AND ONCE THE SELECTION COMMITTEE HAS REVIEWED
12 ALL OF THESE COST PROPOSALS, WHAT HAPPENS AT THAT POINT?

13 A. THE PROPOSALS ARE SCORED, THE COST PROPOSAL --
14 THE BEST AND FINAL OFFER IS SCORED. THEN THE TALLYING
15 HAPPENS IN THE PROCUREMENT DEPARTMENT FOR THE TECHNICAL
16 COMPONENT AS WELL AS THE PRICING COMPONENT. AND THE --
17 IT YIELDS, YOU KNOW, A CANDIDATE WITH THE HIGHEST SCORE
18 AND THEN A SECONDARY CANDIDATE AS WELL.

19 Q. AND WHAT DOES THE PROCUREMENT DEPARTMENT DO WITH
20 THAT INFORMATION?

21 A. THE INFORMATION, WE ESTABLISH A NOTICE OF INTENT
22 TO AWARD. THAT NOTICE OF INTENT TO AWARD IS POSTED
23 PUBLICLY, AND IT LISTS THE SCORES OF THE TOP TWO, MAYBE
24 THREE, DEPENDING ON THE CIRCUMSTANCES AND WHAT THE
25 PROCUREMENT IS. SCORES OF THE CANDIDATES AS POSTED FOR

1 EIGHT DAYS.

2 Q. AND WHY IS THAT INFORMATION POSTED, THAT NOTICE
3 OF INTENT TO AWARD?

4 A. SO THAT THE PUBLIC IS AWARE OF OUR INTENT TO
5 AWARD THE CONTRACT TO THE TOP CANDIDATE. AND IT'S ALSO
6 POSTED SPECIFICALLY FOR THE EIGHT DAYS TO ALLOW FOR ANY
7 KIND OF APPEAL, ANY KIND OF PROTEST, ANY TYPE OF, YOU
8 KNOW, ADDITIONAL INFORMATION THAT THE PUBLIC OR SOME --
9 YOU KNOW, SOMEONE MAY WANT REGARDING HOW WE ARRIVED AT
10 THE SCORES.

11 Q. AND IF THERE WERE TO BE ANY TYPE OF PROTEST OR
12 APPEAL THAT WOULD COME IN DURING THE EIGHT DAYS, WHAT IS
13 THE DUTY OF THE CITY AND THE PROCUREMENT DEPARTMENT ONCE
14 THEY RECEIVE THAT INFORMATION?

15 A. SO WE NEED TO REVIEW AND ADDRESS THE CONCERNS
16 TYPICALLY PRIOR TO MOVING FORWARD WITH THE AWARD.

17 Q. NOW, IN YOUR TIME AT THE PROCUREMENT DEPARTMENT,
18 ARE THERE INSTANCES IN WHICH IT IS MORE FREQUENT OR MORE
19 LIKELY THAT YOU WOULD RECEIVE SOME TIME OF PROTEST OR
20 APPEAL?

21 A. FOR THE INTENT TO AWARD? WE HAVE. WE HAVE HAD
22 THAT EXPERIENCE, YES.

23 Q. DOES THAT HAPPEN MORE OR LESS FREQUENTLY WITH
24 LARGE COMPLEX PROCUREMENTS?

25 A. LESS FREQUENTLY.

1 Q. NOW, COMMISSIONER, YOU MENTIONED THAT THIS WHOLE
2 PROCESS OF THE SELECTION COMMITTEE, THE SCORING AND THE
3 POSTING OF THE INTENT TO AWARD, FOR SOMETHING --
4 HYPOTHETICALLY, IF THE CITY WERE TO DO THAT FOR A NEW
5 VOTING SYSTEM, HOW LONG WOULD YOU ESTIMATE THAT THAT
6 ENTIRE PROCESS WOULD TAKE, APPROXIMATELY?

7 A. FROM THE DRAFTING OF THE RFI THROUGH TO THE
8 AWARD PROCESS?

9 Q. FROM THE TIME THE SELECTION COMMITTEE GETS THE
10 PROPOSALS ALL THE WAY TO WHEN THE NOTICE OF INTENT TO
11 AWARD IS POSTED?

12 A. IT TRULY DEPENDS ON HOW OFTEN THE SELECTION
13 COMMITTEE -- HOW LONG THE SELECTION COMMITTEE TAKES TO
14 IDENTIFY AND SCORE. BUT IT COULD TAKE, AGAIN, ANYWHERE
15 FROM MAYBE THREE MONTHS TO MAYBE FIVE MONTHS.

16 Q. NOW, I WANT TO TURN YOUR ATTENTION TO WHAT YOU
17 IDENTIFIED AS PHASE THREE OF THE BEST VALUE PROCUREMENT.
18 I BELIEVE YOU MENTIONED THAT AT THAT POINT THERE NEEDS
19 TO BE A CONTRACT THAT IS NEGOTIATED AND EXECUTED, IS
20 THAT CORRECT?

21 A. YES.

22 MR. LIEB: I AM JUST GOING TO OBJECT TO
23 THE FORM OF THAT.

24 THE COURT: OVERRULED, GO AHEAD.

25 BY MS. WALSH:

1 Q. COMMISSIONER, CAN YOU TELL US A LITTLE BIT ABOUT
2 WHAT GOES INTO THAT PHASE THREE OF THE BEST VALUE
3 PROCUREMENT; WHAT NEEDS TO OCCUR?

4 A. IN PHASE THREE FOR THE NEGOTIATION OF THE
5 CONTRACT IS TYPICALLY HANDLED BY OUR LAW DEPARTMENT,
6 THEY ARE NEGOTIATING TERMS AND CONDITIONS OF THE
7 CONTRACT.

8 Q. AND FOR SOMETHING LIKE A COMPLEX PROCUREMENT
9 SUCH AS NEW VOTING SYSTEMS, HOW LONG WOULD YOU
10 APPROXIMATE SOMETHING LIKE THAT WOULD TAKE?

11 A. I CAN APPROXIMATE APPROXIMATELY TWO MONTHS FOR
12 THE NEGOTIATION, MAYBE.

13 Q. NOW, COMMISSIONER, HOW MANY CONTRACTS COME
14 THROUGH YOUR DEPARTMENT IN A TYPICAL YEAR?

15 A. PROBABLY 1,500.

16 Q. AND ALL OF THOSE CONTRACTS YOU SIGN OFF ON?

17 A. NOT DIRECTLY. THE SMALL ORDER PURCHASES I DO
18 NOT SIGN OFF ON DIRECTLY. THE LARGER CONTRACTS OR
19 AMENDMENTS TO CONTRACTS OR RENEWALS TO CONTRACTS, THEN I
20 DO SIGN, YES.

21 Q. NOW, YESTERDAY I BELIEVE COUNSEL WAS ASKING YOU
22 ABOUT YOUR ESTIMATION THAT PROCURING A NEW VOTING SYSTEM
23 COULD TAKE APPROXIMATELY 18 TO 24 MONTHS. I KNOW THAT
24 YOU SORT OF OUTLINED APPROXIMATE TIME LINES FOR EACH
25 PHASE OF THIS BEST VALUE PROCUREMENT FOR THE COURT

1 TODAY, WHICH SEEMS LIKE IT ADDS UP TO SOMEWHERE BETWEEN
2 9 AND 12 MONTHS. HOW DO YOU RECONCILE THAT WITH WHAT
3 YOU TESTIFIED TO YESTERDAY OF APPROXIMATING 18 TO
4 24 MONTHS FOR NEW VOTING SYSTEMS?

5 A. WELL, THE 18 TO 24 MONTHS, THE DIFFERENCE -- LET
6 ME GO BACK. THE DIFFERENCE IS THE RFI THROUGH TO THE
7 CONTRACT NEGOTIATION IS TYPICALLY THE PROCUREMENT
8 PROCESS ONLY. IT DOES NOT ACCOUNT FOR, AGAIN, AS I
9 STATED THE OTHER DAY, CITY COUNCIL REVIEW AND APPROVAL.
10 IT DOESN'T ACCOUNT FOR ANY ORDINANCE THAT WE NEED TO
11 PASS THROUGH CITY COUNCIL FOR AN EXTENDED CONTRACT.
12 TYPICALLY CITY CONTRACTS ARE ONE YEAR PLUS FOUR, BUT IN
13 SOME INSTANCES, IT'S REQUIRED TO -- OR THE DEPARTMENT
14 WILL ELECT TO HAVE A LONGER CONTRACT. ANYTHING BEYOND
15 THAT HAS TO GO THROUGH CITY COUNCIL, SO THERE IS A WHOLE
16 PROCESS FOR THAT. AND WHATEVER THE BOARD OF ELECTIONS,
17 THE CITY COMMISSIONERS NEED TO DO. THEY HAVE TO MEET
18 PUBLICLY, THEY NEED TO, YOU KNOW, GO THROUGH THEIR
19 PROCESS. ALL OF THAT IS NOT PART OF THE PROCUREMENT
20 PROCESS, BUT IT DEFINITELY WOULD GO INTO NEW VOTING
21 MACHINE PROCESS.

22 Q. AND WHEN -- IN TERMS OF OBTAINING THE, YOU KNOW,
23 THE FINANCES FOR PROCURING A NEW SYSTEM --

24 A. YES.

25 Q. -- WHAT NEEDS TO HAPPEN FOR THAT?

1 A. SO THAT WOULD ALSO -- THE DIRECTOR OF FINANCE
2 WOULD BE INVOLVED WITH THAT. THAT ALSO NEEDS TO GO
3 THROUGH APPROVAL THROUGH THE MAYOR'S OFFICE AS WELL AS
4 COUNCIL, CITY COUNCIL.

5 Q. AND IN THE INSTANCE OF PROCURING NEW VOTING
6 SYSTEMS, WHAT ARE SOME OF THE THINGS THAT THE BOARD OF
7 ELECTIONS WOULD HAVE TO DO BEFORE THEY WERE TO SELECT
8 THE NEW MACHINES, IF YOU KNOW?

9 A. OUTSIDE OF THEM HAVING TO HOLD PUBLIC MEETINGS
10 AND I DON'T KNOW HOW MANY. THERE MAY BE A SERIES OF
11 PUBLIC MEETINGS INVOLVED IN THE PROCESS OF PROCURING
12 THAT THEY NEED TO -- I AM ACTUALLY NOT 100 PERCENT SURE,
13 BUT I DO KNOW THEY NEED TO HOLD PUBLIC MEETINGS.

14 Q. NOW, COMMISSIONER, IF THE CITY WERE TO GO WITH A
15 NEW VOTING SYSTEM, COULD YOU USE THE SAME RFI OR RFP
16 THAT WAS ISSUED PREVIOUSLY FOR THE SYSTEMS THAT WERE
17 OBTAINED FOR THE 2019 GENERAL ELECTION?

18 A. THE REASON WHY I WOULD NOT RECOMMEND THAT IS
19 BECAUSE I UNDERSTAND THAT NEW SYSTEMS HAVE BEEN
20 CERTIFIED BY THE STATE, AND WE DO NOT HAVE KNOWLEDGE OF
21 WHAT THOSE -- THE TECHNICAL COMPONENTS OF THOSE MACHINES
22 COULD BE, HOW OR WHICH MACHINE, AGAIN, COULD SUIT THE
23 CITY'S NEEDS. SO I WOULD RECOMMEND THAT WE PUT OUT AN
24 RFI TO, AGAIN, GET THE INFORMATION FOR THOSE SYSTEMS,
25 AND THEN MOVE THROUGH THE RFP PROCESS. I THINK THAT IF

1 WE WERE TO USE THE SAME ONE, IT WOULD NARROW -- IT WOULD
2 NARROW OUR SCOPE AND MAYBE NOT YIELD THE BEST OPTION FOR
3 THE CITY.

4 BY THE COURT:

5 Q. COMMISSIONER, IF YOU KNOW, WHEN FOR THESE -- THE
6 MACHINES, THE EXPRESS XL, WHAT ULTIMATELY BECAME THE
7 PURCHASE OF THE EXPRESS XL MACHINES, DO YOU REMEMBER
8 WHEN THE RFI WAS POSTED, APPROXIMATELY THE YEAR?

9 A. IN 2018.

10 Q. IF THE CITY HAD TO PURCHASE NEW MACHINES THIS
11 YEAR, WOULD IT BE FAIR TO SAY THAT NOT ONLY AS YOU SAY
12 THERE WERE NEW MACHINES THAT WERE CERTIFIED, THE CITY
13 DOES NOT KNOW WHETHER OR NOT THE MACHINES FROM TWO YEARS
14 AGO STILL EXIST OR EXIST IN THE SAME FORM THEY EXISTED
15 TWO YEARS AGO?

16 A. THAT'S TRUE, YES.

17 BY MS. WALSH:

18 Q. COMMISSIONER, EVEN IF YOU TOOK AWAY THIS PHASE
19 ONE OF SELECTING -- OR TRYING TO DETERMINE WHAT ACTUALLY
20 EXISTS OR WHAT IS OUT THERE THROUGH THE RFI AND RFP
21 PROCESS. LET'S SAY YOU SPED UP RIGHT TO SELECTION. IN
22 YOUR OPINION, WOULD THERE BE ENOUGH TIME FOR THE CITY TO
23 SELECT, NEGOTIATE A CONTRACT AND EXECUTE THAT CONTRACT
24 TO PROCURE A NEW VOTING SYSTEM IN TIME FOR THE 2020
25 GENERAL ELECTION?

1 A. I DON'T BELIEVE SO.

2 MS. WALSH: I HAVE NOTHING FURTHER, YOUR
3 HONOR.

4 THE COURT: MR. LIEB.

5 I'M SORRY, DOES THE STATE HAVE ANY
6 QUESTION?

7 MR. WIYGUL: THE STATE IS PLEASED TO
8 STATE NO, YOUR HONOR.

9 THE COURT: MR. LIEB.

10 REDIRECT EXAMINATION

11 BY MR. LIEB:

12 Q. OKAY. COMMISSIONER, A FEW FOLLOW UP ITEMS.

13 FIRST OF ALL, I JUST WANT TO BE CLEAR
14 THAT EVERYTHING YOU TESTIFIED TO ON THIS EXAMINATION BY
15 COUNSEL FOR THE CITY, THOSE TIMEFRAMES, THAT PROCEDURE
16 APPLIES IF THE BEST VALUE PROCESS IS BEING FOLLOWED IN
17 THE ORDINARY COURSE, RIGHT?

18 A. YES.

19 Q. NONE OF THAT HAS ANYTHING TO DO WITH EMERGENCIES
20 OR SPEEDING UP THE TIMELINE IN CASE THERE IS, YOU KNOW,
21 AN URGENT NEED TO COMPLY WITH A FEDERAL COURT ORDER,
22 RIGHT?

23 A. THAT'S CORRECT.

24 Q. SO SPECIFICALLY, THE RFI IN THIS CASE WAS ISSUED
25 ON JUNE 4TH, 2018. AND WHEN I SAY IN THIS CASE, I MEAN

1 THE RFI THAT LED TO THE SELECTION OF THE EXPRESSVOTE XL
2 WAS ISSUED ON JUNE 4, 2018, RIGHT?

3 A. YES.

4 Q. OKAY. AND THEN THE STIPULATED FACT IN THESE
5 PROCEEDINGS THAT THE CITY VOTED TO PURCHASE THE XL ON
6 FEBRUARY 20, 2019. WILL YOU ACCEPT THAT REPRESENTATION?

7 A. FEBRUARY 20TH? THE BOARD OF ELECTIONS VOTED ON
8 FEBRUARY 20TH, YES.

9 Q. OKAY. SO THAT IS LESS THAN NINE MONTHS FROM RFI
10 TO SELECTION, CORRECT?

11 A. YES.

12 Q. NOW, YOU TESTIFIED IN RESPONSE TO COUNSEL THAT
13 YOU WOULD NOT RECOMMEND USING THE SAME RFI AND RFP IN
14 THE EVENT THE CITY HAD TO PROCURE NEW VOTING MACHINES,
15 CORRECT?

16 A. YES.

17 Q. THAT'S SOMETHING THAT IS WITHIN YOUR DISCRETION?

18 A. TO RECOMMEND THAT WE NOT USE THE SAME RFI AND
19 RFP?

20 Q. TO RECOMMEND THAT YOU USE IT OR NOT USE IT?

21 A. IT'S SOMETHING THAT I CAN RECOMMEND, YES.

22 Q. NOW, IF THE RFI WERE -- IF THE SYSTEMS WERE
23 DECERTIFIED, AND IF THE CITY WERE NOT PROVIDED WITH NEW
24 MACHINES BY ES&S AT NO COST, AND IF THE CITY DECIDED TO
25 UNDERTAKE A NEW PROCUREMENT PROCESS, THE RFI MIGHT NEED

1 TO BE UPDATED FROM LAST TIME, RIGHT?

2 A. YES.

3 Q. YOU ARE NOT GOING TO HAVE TO START FROM SCRATCH,
4 THOUGH, ARE YOU?

5 A. NOT NECESSARILY.

6 Q. THERE STILL IS ALL THIS INFORMATION THAT WAS OUT
7 THERE ABOUT HOW THESE VOTING SYSTEMS WORKED LESS THAN
8 TWO YEARS AGO, RIGHT?

9 A. THE INFORMATION THAT WE GOT TWO YEARS AGO WAS
10 ONLY FOR THE MACHINES THAT WERE CERTIFIED, BUT
11 ADDITIONAL MACHINES HAVE BEEN CERTIFIED SINCE THE
12 INFORMATION --

13 Q. RIGHT. YOU MIGHT WANT TO LOOK INTO WHATEVER
14 MACHINES HAVE BEEN CERTIFIED, RIGHT?

15 A. CORRECT.

16 Q. AND YOU WANT TO MAKE SURE THAT THE INFORMATION
17 THAT YOU HAD LESS TWO YEARS AGO ABOUT THE OTHER MACHINES
18 WAS STILL UP TO DATE, RIGHT?

19 A. YES.

20 Q. OKAY. YOU HAVE HEARD TESTIMONY AS YOU HAVE BEEN
21 SITTING HERE THAT THERE WAS A PETITION FILED BY SOME
22 VOTERS TO DECERTIFY THESE MACHINES WITH THE SECRETARY OF
23 THE COMMONWEALTH IN JUNE OF LAST YEAR. HAVE YOU HEARD
24 THAT TESTIMONY AS YOU HAVE BEEN SITTING HERE?

25 A. YES.

1 Q. WERE YOU AWARE OF THAT FACT?

2 A. YES.

3 Q. WHAT STEPS DID -- TO YOUR KNOWLEDGE, DID THE
4 PROCUREMENT DEPARTMENT OR OTHERS TAKE TO UPDATE
5 THEMSELVES ABOUT THE STATE OF CERTIFIED VOTING MACHINES
6 AT THAT TIME, IN CASE THE SECRETARY DECERTIFIED THE
7 MACHINES?

8 A. SO THE PROCUREMENT DEPARTMENT DID NOT UPDATE
9 THEMSELVES. IT IS THE BOARD OF ELECTIONS THAT WOULD
10 NEED TO BE APPRISED OF THAT. THE BOARD OF ELECTIONS HAS
11 THE AUTHORITY OVER WHAT ELECTION MACHINES ARE ISSUED IN
12 THE CITY.

13 Q. SO YOU HAVE --

14 THE COURT: WAIT, WAIT, WAIT, WAIT. ARE
15 YOU FINISHED WITH YOUR ANSWER?

16 THE WITNESS: YES, THAT'S FINE, THANK
17 YOU.

18 BY MR. LIEB:

19 Q. YOU HAVE NO KNOWLEDGE ONE WAY OR THE OTHER ABOUT
20 WHAT STEPS THE BOARD OF ELECTIONS MAY HAVE TAKEN TO
21 UPDATE ITSELF ABOUT THE STATE OF PLAY AT THAT TIME IN
22 CASE THE MACHINES WERE DECERTIFIED?

23 A. I DO NOT.

24 Q. OKAY. NOW, YOU ARE AWARE THAT THERE WAS A
25 FINDING BY THE CITY CONTROLLER THAT THE BEST VALUE

1 GUIDELINES WERE NOT ACTUALLY FOLLOWED --

2 MS. WALSH: OBJECTION.

3 MR. LIEB: -- IN THE CASE OF THE

4 PERSON --

5 THE COURT: OVERRULED. I WILL ALLOW YOU

6 TO QUESTION HER IN CONNECTION WITH WHETHER OR NOT THE

7 PROCESS THAT WAS FOLLOWED HERE DIFFERS FROM THE PROCESS

8 THAT SHE DESCRIBED. I WILL ALLOW YOU TO QUESTION HER ON

9 THAT.

10 BY MR. LIEB:

11 Q. YOU ARE AWARE, COMMISSIONER, THAT THERE WAS A

12 FINDING BY THE CITY CONTROLLER THAT THE BEST VALUE

13 GUIDELINES WERE NOT, IN FACT, FOLLOWED IN CONNECTION

14 WITH THE PURCHASE OF THE EXPRESSVOTE XL, CORRECT?

15 A. YES.

16 MR. LIEB: NOTHING FURTHER.

17 THE COURT: ALL RIGHT THEN.

18 COMMISSIONER, THANK YOU SO MUCH.

19 THE WITNESS: THANK YOU.

20 MR. LIEB: BEFORE WE MOVE ON TO THE NEXT

21 AND FROM OUR PERSPECTIVE FINAL WITNESS, THERE WERE A FEW

22 THINGS I WANTED TO MOVE INTO EVIDENCE, JUDGE.

23 THE COURT: OKAY.

24 MR. LIEB: THEY ARE NOT THINGS THAT ARE

25 IN THE BINDERS, SO --

1 THE COURT: THERE IS SOMETHING THAT ISN'T
2 IN THE BINDER?

3 MR. LIEB: BELIEVE IT OR NOT, NOT EVERY
4 PIECE OF PAPER IN THE WORLD IS IN THESE BINDERS.

5 MAY I APPROACH WITH THE TWO COPIES?

6 THE COURT: SURE. I REALLY WANT MORE
7 PAPER.

8 DOES COUNSEL HAVE THESE?

9 MR. LIEB: SO THE COPIES ARE -- I HAVE
10 COPIES OF THE REPORT. COUNSEL PROVIDED ME COPIES OF 17
11 AND 18, SO WHAT HAS BEEN MARKED AS PLAINTIFFS' EXHIBITS
12 1017 AND 1018 ARE TWO E-MAILS WITH ATTACHMENTS FROM SUE
13 ANN UNGER TO MAGISTRATE JUDGE RICE'S CHAMBERS THAT WERE
14 PROVIDED YESTERDAY BY MR. WIYGUL IN RESPONSE TO THE
15 COURT'S ORDER ON DEFENDANTS' SETTLEMENT CONFERENCE
16 POSITION. I THINK IT'S FAIR TO SAY THAT THOSE TWO
17 E-MAILS COLLECTIVELY COMPRISE DEFENDANTS' SETTLEMENT
18 CONFERENCE STATEMENT TO MAGISTRATE JUDGE RICE. AND WE
19 WOULD OFFER THEM AT THIS TIME.

20 THE COURT: OKAY, ANY OBJECTION?

21 MR. ARONCHICK: YOUR HONOR, THE
22 DEFENDANTS HAVE NO OBJECTIONS IN ADDITION TO THE ONES
23 YOUR HONOR OVERRULED EARLIER.

24 THE COURT: OKAY. THEY WILL BE ADMITTED.

25 (PLAINTIFFS' EXHIBITS 1017 AND 1018 ARE

1 ADMITTED INTO EVIDENCE.)

2 MR. LIEB: AND THEN, JUDGE, WHAT HAS BEEN
3 MARKED AS PLAINTIFFS' EXHIBIT, I GUESS, 1019 IS THE
4 LENGTHIER DOCUMENT.

5 THE COURT: OH, YES.

6 MR. LIEB: THE COURT MAY RECALL THAT
7 ADMITTED TO TUESDAY AS DEFENDANTS' EXHIBIT F WAS AN
8 EXCERPT OF THIS REPORT. SECRETARY BOOCKVAR TESTIFIED IN
9 HER TESTIMONY THAT THE PATH THAT THE COMMONWEALTH SET
10 OUT ON, WHICH IN HER VIEW --

11 THE COURT: I THINK THIS IS ADMISSIBLE.
12 IS THERE AN OBJECTION?

13 MR. WIYGUL: WE DO OBJECT, YOUR HONOR. I
14 THINK, AS I UNDERSTAND IT, THAT COUNSEL IS APPEALING TO
15 THE RULE OF COMPLETENESS HERE. THE RULE OF COMPLETENESS
16 DOES NOT STAND FOR THE PROPOSITION THAT A PARTY CAN AS
17 AN AFTERTHOUGHT ADD A 150-PLUS PAGE DOCUMENT TO A RECORD
18 WHERE --

19 THE COURT: I WILL ADMIT IT FOR WHAT IT'S
20 WORTH. IT'S ADMITTED.

21 MR. WIYGUL: JUST NOT FOR THE TRUTH OF
22 THE MATTER, YOUR HONOR. I JUST WANT TO CLARIFY THAT,
23 IT'S HEARSAY.

24 THE COURT: IT DEPENDS ON WHAT IS IN IT,
25 BUT I WILL ADMIT IT.

1 MR. WIYGUL: THANK YOU.

2 (PLAINTIFFS' EXHIBIT 1019 IS ADMITTED
3 INTO EVIDENCE.)

4 MR. LIEB: WITH THAT, I WOULD CALL -- I'M
5 SORRY, I AM NOT SURE OF HIS CURRENT TITLE, BUT MR.
6 LYNCH.

7 (WITNESS SWORN.)

8 THE WITNESS: JOSEPH LYNCH, J-O-S-E-P-H
9 L-Y-N-C-H.

10 THE COURT: PLEASE BE SEATED.

11 DIRECT EXAMINATION

12 BY MR. LIEB:

13 Q. GOOD MORNING, SIR. I KNOW YOU HAVE BEEN HERE
14 FOR A LOT OF THESE PROCEEDINGS AND THANK YOU FOR YOUR
15 PATIENCE.

16 WHAT IS YOUR CURRENT TITLE, SIR?

17 A. EXECUTIVE DIRECTOR.

18 Q. AND THAT'S EXECUTIVE DIRECTOR OF THE --

19 A. COUNTY BOARD OF ELECTIONS.

20 Q. AND YOU'VE WORKED FOR THE BOARD OF ELECTIONS FOR
21 25 YEARS?

22 A. YES.

23 Q. AND YOU HAVE SPENT THE LAST -- BEFORE BECOMING
24 EXECUTIVE DIRECTOR, YOU SPENT 19 YEARS AS AN ASSISTANT
25 ADMINISTRATIVE ELECTION ACTIVITIES?

1 A. CORRECT.

2 Q. YOU HAVE BEEN AN ELECTION ADMINISTRATOR IN
3 PENNSYLVANIA FOR ALMOST TWO DECADES?

4 A. YES.

5 Q. THE PHILADELPHIA COUNTY BOARD OF ELECTIONS DOES
6 NOT CONTROL WHAT VOTING SYSTEMS ARE CERTIFIED FOR USE IN
7 THE COMMONWEALTH, CORRECT?

8 A. TRUE.

9 Q. THE FEDERAL GOVERNMENT HAS TO CERTIFY THEM,
10 RIGHT?

11 A. YES.

12 Q. AND THE COMMONWEALTH OF PENNSYLVANIA HAS TO
13 CERTIFY THEM?

14 A. THE COMMONWEALTH, YES.

15 Q. SO AT ANY MOMENT, FOR REASONS BEYOND YOUR
16 CONTROL, A VOTING SYSTEM COULD BE DECERTIFIED BY ONE OF
17 THOSE AUTHORITIES, RIGHT?

18 A. TRUE.

19 Q. THEY COULD DISCOVER A SECURITY FLAW OR SOME
20 OTHER ISSUE THAT COMPELS DECERTIFICATION OF THE
21 MACHINES, RIGHT?

22 A. I SUPPOSE.

23 Q. AND DECERTIFICATION HAS HAPPENED ON OCCASION IN
24 THE PAST, RIGHT?

25 A. NOT SINCE I HAVE -- NOT SINCE I HAVE BEEN

1 AROUND.

2 Q. WELL, YOU ARE AWARE THEN IN 2007 THE
3 COMMONWEALTH DECERTIFIED EQUIPMENT USED IN NORTHAMPTON,
4 LACKAWANNA AND WAYNE COUNTIES FOUR MONTHS BEFORE THE
5 2008 PRESIDENTIAL PRIMARY?

6 A. IN THOSE COUNTIES, POSSIBLY. I WAS NOT AWARE OF
7 IT.

8 Q. WHAT CONTINGENCY PLANS DOES THE PHILADELPHIA
9 COUNTY BOARD OF ELECTIONS CURRENTLY HAVE IN PLACE IN
10 CASE WHATEVER SYSTEM IT'S USING IS UNEXPECTEDLY
11 DECERTIFIED BY THE STATE OR FEDERAL GOVERNMENTS?

12 A. FOR WHICH ELECTION?

13 Q. WELL, LET'S START WITH WHATEVER THE NEXT
14 ELECTION IS GOING TO BE.

15 A. YOU MEAN THIS TUESDAY? WE HAVE A SPECIAL
16 ELECTION THIS TUESDAY, FEBRUARY 25TH.

17 Q. AS A GENERAL MATTER, WHAT CONTINGENCY PLANS DOES
18 THE DEPARTMENT HAVE IN PLACE FOR NONSPECIAL REGULARLY
19 SCHEDULED ELECTIONS IN THE EVENT THE SYSTEM IT IS USING
20 IS UNEXPECTEDLY DECERTIFIED BY THE STATE OR FEDERAL
21 GOVERNMENT?

22 THE COURT: WHY DON'T WE START WITH THE
23 PRIMARY.

24 THE WITNESS: OKAY, YOUR HONOR, I KNOW
25 YOU ASKED THE SECRETARY THE OTHER DAY WHETHER OR NOT IF

1 WE DECERTIFY IF WE WOULD BE READY FOR THE PRIMARIES? I
2 WOULD JUST FLAT OUT SAY NO.

3 THE COURT: AND THE QUESTION THAT MR.
4 LIEB ASKED YOU IS: DO YOU HAVE ANY CONTINGENCY PLANS IN
5 PLACE IN THE EVENT THE EXPRESS XL MACHINES ARE
6 DECERTIFIED SAY THIS WEEK? DO YOU HAVE ANY CONTINGENCY
7 PLANS FOR DEALING WITH THE DECERTIFICATION WITH RESPECT
8 THE MAY PRIMARY OF 2020?

9 THE WITNESS: NO, YOUR HONOR, WE DON'T
10 BECAUSE WE ANTICIPATE A HIGH VOLUME OF VOTERS COMING
11 OUT, HIGH VOLUME OF REGISTRATIONS, AND THEY JUST PASSED
12 ACT 77 IN OCTOBER OF '19 WHICH WE WERE NOT READY FOR.
13 SO WE ARE ANTICIPATING A LOT MORE WORK FOR THE PRIMARY
14 AND QUADRUPLE THE WORK IN THE GENERAL ELECTION.
15 BY MR. LIEB:

16 Q. WITH REGARD TO THE GENERAL ELECTION OF 2020,
17 COMPLETELY SEPARATE AND APART FROM THIS LITIGATION, THIS
18 SETTLEMENT AGREEMENT, WHAT CONTINGENCY PLANS DOES THE
19 PHILADELPHIA COUNTY BOARD OF ELECTIONS HAVE IN PLACE IN
20 THE EVENT ITS MACHINES OF CHOICE ARE UNEXPECTEDLY
21 DECERTIFIED BY THE STATE OR FEDERAL GOVERNMENT?

22 A. CONTINGENCY PLAN IF THEY WERE TO DECERTIFY, WE
23 WOULD HAVE TO GO BACK TO OUR OLD DRE'S. BUT THEY ARE
24 NOT EVEN READY.

25 Q. SO --

1 THE WITNESS: YOUR HONOR, I WOULD LIKE TO
2 EXPLAIN FOR THE COURT. WITH ACT 77 BEING IMPLEMENTED,
3 THERE IS GOING TO BE A LOT OF WORK NOT JUST FOR OUR
4 COUNTY BUT FOR EVERY COUNTY THROUGHOUT PENNSYLVANIA. WE
5 ARE ANTICIPATING A LOT MORE REGISTRATIONS COMING IN. WE
6 ARE ANTICIPATING -- BECAUSE IF IT'S THE NON-EXCUSE
7 MAIL-IN BALLOT, WE ARE GOING TO HAVE -- WE ARE
8 ANTICIPATING A LOT MORE PEOPLE VOTING IN PERSON AT OUR
9 LOCATIONS, WHETHER IT WILL BE ROOM 142 CITY HALL OR
10 SPRING GARDEN STREET. AND WE ARE ANTICIPATING A HIGH
11 VOLUME OF REGISTRATIONS WHERE WE ARE GOING TO HAVE TO
12 MOVE PEOPLE AROUND TO WHERE LAST YEAR WHEN WE DID THIS
13 -- WE IMPLEMENTED THE NEW SYSTEM BY MOVING PEOPLE AROUND
14 FROM DIFFERENT DEPARTMENTS. WE ARE NOT GOING TO BE ABLE
15 TO DO THAT THIS YEAR.

16 BY THE COURT:

17 Q. MR. LYNCH, IN THE 25 YEARS YOU HAVE BEEN WITH
18 THE BOARD YOU SAY THERE HAS NEVER BEEN A DECERTIFICATION
19 IN PHILADELPHIA?

20 A. I DON'T RECALL.

21 Q. AND SO I GUESS IN ANSWER TO MR. LIEB'S QUESTION,
22 YOUR ANSWER WOULD BE THE CITY DOES NOT PLAN FOR
23 DECERTIFICATION?

24 A. NO, WE DON'T. BUT I WILL SAY FOR THE COURT, I
25 WILL WORK MY HARDEST TO MAKE SOMETHING HAPPEN IF THAT

1 WAS GOING TO HAPPEN, BUT I DON'T SEE IT HAPPENING.

2 Q. YOU DON'T SEE --

3 A. I DON'T SEE US BEING ABLE TO DO IT IN A
4 PRESIDENTIAL YEAR. THAT'S WHY WE IMPLEMENTED THE NEW
5 SYSTEM ON AN OFF YEAR.

6 THE COURT: OKAY.

7 BY MR. LIEB:

8 Q. YOU ARE AWARE THAT VOTERS FILED THE PETITION TO
9 DECERTIFY THE XL WITH THE SECRETARY OF THE COMMONWEALTH
10 IN JUNE OF 2019, CORRECT?

11 A. YES, I AM.

12 Q. YOU WERE AWARE OF THAT PETITION AT OR AROUND THE
13 TIME IT WAS FILED?

14 A. I WAS AWARE OF IT, BUT I HAD NO PARTS OF THAT.

15 Q. OKAY. YOU WERE IN THE COURTROOM JUST A FEW
16 MINUTES AGO FOR THE PROCUREMENT COMMISSIONER'S
17 TESTIMONY?

18 A. YES.

19 THE COURT: HE HAS BEEN IN THE COURTROOM
20 FOR THREE DAYS. HE IS THE TALLEST GUY IN THE BACK,
21 THAT'S WHY I NOTICED. HE STOOD OUT.

22 BY MR. LIEB:

23 Q. IN RESPONSE TO THE FILING OF THAT PETITION, WHAT
24 STEPS, IF ANY, DID THE BOARD OF ELECTIONS TAKE TO UPDATE
25 ITSELF ABOUT THE STATE OF EXISTING VOTING SYSTEMS IN

1 CASE A NEW PROCUREMENT PROCESS NEEDED TO OCCUR?

2 A. WELL, SIR, I WAS NOT PART OF THAT PROCESS SO I
3 DON'T KNOW. THE ONLY PROCESS I WAS PART OF IS WHEN THE
4 BOARD SELECTED THE MACHINES, AND THEN I TOOK THE BALL
5 AND RAN WITH IT. THAT WAS MY ONLY PART.

6 Q. OKAY. YOU ARE THE EXECUTIVE DIRECTOR OF THE
7 BOARD OF ELECTIONS, RIGHT?

8 A. CORRECT, YES.

9 Q. WHEN DID YOU BECOME THE EXECUTIVE DIRECTOR?

10 A. JUST ABOUT A MONTH AGO.

11 Q. OKAY. THROUGHOUT THE ENTIRE PERIOD THAT YOU
12 HAVE BEEN THE EXECUTIVE DIRECTOR OF THE BOARD OF
13 ELECTIONS, THIS MOTION HAS BEEN PENDING, RIGHT?

14 THE COURT: IF YOU ARE GOING TO MAKE
15 ARGUMENT THROUGH HIM SAYING YOU HAVE NOT MADE ANY
16 CONTINGENCY PLANS, I GET IT. HE SAID THERE ARE NO
17 CONTINGENCY PLANS, AND THAT'S OBVIOUSLY WHAT YOU ARE
18 LEADING UP TO. SO I ANTICIPATE YOUR QUESTION, AND HE
19 HAS ALREADY ANSWERED IT, BUT WHY DON'T YOU GO AHEAD.

20 MR. LIEB: RESPECTFULLY, YOUR HONOR, IT'S
21 A SLIGHTLY DIFFERENT QUESTION.

22 THE COURT: WELL, I AM ALWAYS PLEASED TO
23 BE WRONG. GO AHEAD.

24 BY MR. LIEB:

25 Q. THE QUESTION, SIR, IS: IN THE TIME THAT YOU

1 HAVE BEEN THE EXECUTIVE DIRECTOR OF THE BOARD OF
2 ELECTIONS, WHAT STEPS HAS THE BOARD OF ELECTIONS TAKEN
3 TO UPDATE ITS KNOWLEDGE ABOUT THE STATE OF EXISTING
4 SYSTEMS THAT ARE CERTIFIED FOR USE IN PENNSYLVANIA?

5 A. THAT WOULD BE UP TO THE BOARD. IT HAS NOTHING
6 TO DO WITH ME.

7 Q. WHEN YOU SAY THE BOARD, YOU MEAN THE THREE CITY
8 COMMISSIONERS WHO CONSTITUTE THE BOARD?

9 A. YES, SIR.

10 Q. THAT'S THEIR DECISION AS OPPOSED TO THE
11 PROFESSIONAL STAFF OF THE DEPARTMENT?

12 A. IT'S WHATEVER THEY IMPLEMENT AND WE HAVE TO RUN
13 WITH IT.

14 Q. DO YOU, SIR, AS THE EXECUTIVE DIRECTOR HAVE THE
15 DISCRETION TO CALL UP THE DEPARTMENT AND STATE AND LEARN
16 ABOUT THE DIFFERENT MACHINES THAT HAVE BEEN CERTIFIED IN
17 THE INTERVENING TIME BETWEEN -- WELL, 2018 AND TODAY?

18 A. I WOULD NOT GET INVOLVED IN THAT PROCESS.

19 Q. SO AS THE EXECUTIVE DIRECTOR OF THE PHILADELPHIA
20 COUNTY BOARD OF ELECTIONS, YOU WOULD NOT KEEP YOURSELF
21 UP TO DATE ABOUT WHAT VOTING SYSTEMS THE SECRETARY OF
22 THE COMMONWEALTH IS CERTIFYING FOR USE IN THAT STATE?

23 A. TO BE HONEST WITH YOU, MY OPINION -- I DON'T
24 THINK MY OPINION WOULD MATTER.

25 Q. WHY IS THAT?

1 A. IT'S UP TO THE COMMISSION WHAT THEY WANT TO
2 PICK.

3 Q. AND YOU DON'T THINK THE THREE COMMISSIONERS WHO
4 COMPRISE THE BOARD WOULD VALUE THE INPUT OF THEIR
5 PROFESSIONAL EXECUTIVE DIRECTOR WHO HAS SPENT 20 YEARS
6 IN ELECTION ADMINISTRATION IN PENNSYLVANIA?

7 A. OF COURSE THEY WOULD, BUT I DON'T KNOW THAT THEY
8 WOULD LISTEN. I AM SERIOUS.

9 THE COURT: WELCOME TO PHILADELPHIA, MR.
10 LIEB.

11 BY MR. LIEB:

12 Q. WELL --

13 A. I VALUE THEIR OPINION, THOUGH.

14 Q. WHILE WE ARE ON THAT SUBJECT, DID YOU HAVE AN
15 OPINION ABOUT WHAT MACHINES THEY SHOULD BUY IN 2018?

16 A. NO.

17 Q. DID YOU MAKE A RECOMMENDATION ABOUT WHAT
18 MACHINES THEY SHOULD BUY IN 2018?

19 A. I'M SORRY, REPEAT THAT.

20 Q. DID YOU OR TO YOUR KNOWLEDGE ANY OTHER
21 PROFESSIONAL STAFF MAKE A RECOMMENDATION ABOUT WHAT
22 MACHINES THEY SHOULD BUY?

23 A. NO.

24 Q. SO THE XL WAS SELECTED ON FEBRUARY 20TH OF 2019,
25 RIGHT?

1 A. CORRECT.

2 Q. AND THE CONTRACT WAS FINALIZED ON MAY 18TH OF
3 2019, RIGHT?

4 A. CORRECT.

5 Q. AND THEN THE MACHINES WERE USED IN THE
6 NOVEMBER 5TH, 2019 GENERAL ELECTION, RIGHT?

7 A. YES.

8 Q. AND THERE WERE 304,553 VOTES CAST IN
9 PHILADELPHIA?

10 A. CORRECT.

11 Q. AT 831 POLLING LOCATIONS, ALL OF WHICH USED THE
12 EXPRESSVOTE XL, RIGHT?

13 A. YES.

14 Q. AND IN YOUR VIEW, THAT ELECTION WENT AS SMOOTHLY
15 IF NOT MORE SMOOTHLY THAN PREVIOUS ELECTIONS, RIGHT?

16 A. MORE SMOOTHLY, SIR.

17 BY THE COURT:

18 Q. BEFORE YOU GO ON, AND THIS MAY NOT BE YOUR AREA
19 OF EXPERTISE, MR. LYNCH, BUT BETWEEN THE TIME THE
20 CONTRACT IS SIGNED, AFTER THE CONTRACT IS SIGNED, IS IT
21 YOUR DEPARTMENT THAT IS RESPONSIBLE FOR ARRANGING FOR
22 THE TRANSPORTATION OF THE MACHINES TO PHILADELPHIA AND
23 THEIR PLACEMENT IN A WAREHOUSE AND THEIR EVENTUAL
24 PLACEMENT AT THE POLLING PLACES?

25 A. YES, YOUR HONOR. ACTUALLY, IT WAS FEBRUARY 20TH

1 WHEN IT WAS SELECTED WE STARTED.

2 Q. HOW LONG WAS IT BEFORE THE MACHINES -- THE
3 MACHINES WERE TRANSFERRED FROM OMAHA?

4 A. YES, SIR.

5 Q. AND HOW LONG BEFORE THE MACHINES ARRIVED IN
6 PHILADELPHIA, IF YOU RECALL?

7 A. HOW LONG?

8 Q. YES, DAYS, WEEK, MONTHS?

9 A. WELL, THEY STARTED ARRIVING IN APRIL AND THEN WE
10 HAD TO STOP -- WE ONLY HAD ONE SHIPMENT IN APRIL, THEN
11 WE HAD THE MAY PRIMARY WE HAD TO CONTEND WITH WITH THE
12 OLD SYSTEM, AND THEN THEY STARTED RESUMING IN JUNE.

13 Q. AND THEY WERE PLACED IN A WAREHOUSE THAT THE
14 CITY APPARENTLY HAD SPECIALLY LEASED FOR THOSE MACHINES?

15 A. YES, SIR.

16 Q. AND HOW LONG BEFORE -- IT'S BEEN, I GUESS,
17 AGREED -- WELL, YOU WOULD KNOW. HOW MANY MACHINES WERE
18 PURCHASED, IN THE NEIGHBORHOOD OF 3,800?

19 A. 3,750.

20 Q. AND THEY WERE ALL IN THAT WAREHOUSE?

21 A. ALL, BUT THERE WAS 300 -- ABOUT 300 IN A
22 SEPARATE WAREHOUSE BECAUSE THEY ALL DIDN'T FIT IN THE
23 NEW WAREHOUSE.

24 Q. WHEN DID THE LAST OF THE MACHINES COME IN?
25 PRESUMABLY IT WAS AFTER THE MAY PRIMARY?

1 A. YES, SIR. WE WENT ALL -- IT TOOK US FOUR
2 MONTHS. AROUND AUGUST WAS THE LAST SHIPMENT.

3 Q. AND HOW LONG DOES IT TAKE TO TRANSPORT THE
4 MACHINES FROM THE TWO WAREHOUSES TO THE 800 ODD POLLING
5 PLACES?

6 A. IT'S 10 DAYS, USUALLY 10 DAYS.

7 THE COURT: OKAY.

8 BY MR. LIEB:

9 Q. SO IT WAS -- FROM THE FEBRUARY 20TH SELECTION OF
10 THE MACHINES TO THE NOVEMBER 5TH GENERAL ELECTION WAS
11 SUFFICIENT TIME TO SMOOTHLY RUN THE ELECTION, RIGHT?

12 A. WELL, NOT REALLY. WE WORKED SEVEN DAYS A WEEK.
13 I MYSELF WORKED SEVEN DAYS A WEEK, 12 HOUR DAYS, AT
14 TIMES, TO GET THIS DONE. WE WERE REALLY PUSHING IT.
15 AND WE WERE VERY SUCCESSFUL IN DOING IT.

16 Q. UNDERSTANDING THAT PEOPLE WORKED HARD, THAT WAS
17 SUFFICIENT TIME TO MAKE THE ELECTION RUN SMOOTHLY?

18 A. WELL, THERE WAS OTHER THINGS THAT WERE INVOLVED
19 THAT -- AS FAR AS THE WAREHOUSE, WE HAD TO PROCURE THE
20 WAREHOUSE, WHICH I WAS NOT PART OF, BUT ONCE WE GOT THE
21 WAREHOUSE, THAT HAD TO BE CLIMATE CONTROLLED. WE HAD TO
22 HAVE ELECTRICAL LINES RUN DOWN, WE HAD TO HAVE THE FLOOR
23 SEALED AND HAVE GRIDLINES PAINTED DOWN. WHILE THEY WERE
24 DOING THAT, WE WERE ACCEPTING THE MACHINES.

25 Q. SIR, I DON'T REALLY THINK YOU ARE ANSWERING MY

1 QUESTION.

2 THE COURT: I THINK YOU HAVE MADE YOUR
3 POINT, MR. LIEB.

4 MR. LIEB: RESPECTFULLY, JUDGE, I THINK I
5 AM ENTITLED TO JUST TO AN ANSWER TO THE QUESTION FOR THE
6 PURPOSE OF THE RECORD.

7 THE COURT: WHY DON'T YOU MOVE ON, SIR.
8 BY MR. LIEB:

9 Q. YOU WERE ALSO IMPLEMENTING PILOT AUDITING
10 PROCEDURES FOR THE FIRST TIME IN THE 2019 GENERAL
11 ELECTION, CORRECT?

12 A. YES.

13 Q. ARE YOU GENERALLY FAMILIAR, AS THE EXECUTIVE
14 DIRECTOR OF THE PHILADELPHIA COUNTY BOARD OF ELECTIONS,
15 WITH THE KINDS OF VOTING SYSTEMS USED IN OTHER
16 JURISDICTIONS THROUGHOUT -- OTHER JURISDICTIONS
17 THROUGHOUT THE STATE HAVE SELECTED FOR USE?

18 A. NOT REALLY. I AM NOT REALLY SURE. I'VE TALKED
19 TO OTHER PEOPLE. THEY TELL ME WHAT THEY HAVE, BUT I
20 DON'T -- DOES NOT REALLY CONCERN ME. I AM ONLY
21 CONCERNED ABOUT PHILADELPHIA.

22 Q. ARE YOU AWARE THAT ALLEGHENY COUNTY IS USING
23 PAPER BALLOTS WITH OPTISCANS PURCHASED FROM ES&S?

24 A. ACTUALLY NO, I AM NOT AWARE.

25 Q. DO YOU HAVE ANY KNOWLEDGE ONE WAY OR THE OTHER

1 AS TO WHETHER ES&S IS OBLIGATED TO PROVIDE REPLACEMENT
2 VOTING SYSTEMS TO THE CITY OR TO THE BOARD OF ELECTIONS
3 IN THE EVENT THE SYSTEM IS DECERTIFIED?

4 A. THE FIRST TIME I HEARD IT WAS DURING TESTIMONY
5 THIS WEEK.

6 Q. HAVE YOU, AS THE EXECUTIVE DIRECTOR OF THE
7 COUNTY BOARD OF ELECTIONS, FAMILIARIZED YOURSELF WITH
8 THE TERMS OF THE CONTRACT BETWEEN PHILADELPHIA AND ES&S?

9 A. NO.

10 Q. NOW THAT YOU ARE AWARE OF THIS ISSUE, DO YOU
11 INTEND TO?

12 A. IT'S OPENED MY EYES.

13 Q. DO YOU HAVE ANY BASIS AT THIS TIME TO DISPUTE
14 THAT ES&S IS RESPONSIBLE FOR PROVIDING REPLACEMENT
15 SYSTEMS AT NO COST?

16 MR. WIYGUL: OBJECTION, YOUR HONOR.

17 THE COURT: YES, SUSTAINED. YOU ARE
18 WASTING MY TIME.

19 BY MR. LIEB:

20 Q. THE UPDATED WAREHOUSE, THE UPDATES WERE SEALING
21 THE FLOOR, PUTTING IN POWER OUTLETS, CLIMATE
22 CONTROLLING, RIGHT?

23 A. YES, SIR.

24 Q. CAN YOU STORE PAPER BALLOTS IN THERE?

25 A. YES.

1 Q. YOU CAN STORE OPTISCANS IN THERE?

2 A. STORE OPTICAL SCANS?

3 Q. YES.

4 A. NOT RIGHT NOW, THERE IS NOT ENOUGH ROOM.

5 Q. IF THE XL MACHINES WERE NOT IN THERE, THE
6 WAREHOUSE IS SUITABLE FOR THE STORAGE OF OPTICAL
7 SCANNERS, CORRECT?

8 A. I AM SURE.

9 MR. LIEB: NOTHING FURTHER.

10 THE COURT: ANYTHING FROM THE CITY?
11 ANYTHING FROM THE COMMONWEALTH?

12 MR. WIYGUL: CAN I HAVE TWO MINUTES, YOUR
13 HONOR, JUST TO GO OVER MY NOTES FROM THE QUESTION?

14 THE COURT: SURE.

15 MR. WIYGUL: THANK YOU VERY MUCH.

16 (SHORT PAUSE IN THE HEARING.)

17 MR. FIELD: JUST A FEW QUESTIONS, YOUR
18 HONOR.

19 THE COURT: OKAY.

20 CROSS-EXAMINATION

21 BY MR. FIELD:

22 Q. MR. LYNCH, FIRST, THANK YOU FOR BEING HERE FOR
23 THIS SEVERAL DAYS OF THIS HEARING.

24 MR. LIEB WAS ASKING YOU SOME QUESTIONS
25 ABOUT THE TIMELINE ON WHICH A NEW SYSTEM COULD BE

1 TRANSITIONED TO BY THE CITY OF PHILADELPHIA IF IT HAD
2 TO. COULD YOU, FOR THE COURT, JUST EXPLAIN THE STEPS
3 YOU WOULD HAVE TO TAKE AND THE VARIOUS ASPECTS OF THE
4 ELECTION ADMINISTRATION YOU OVERSEE TO TRANSITION TO A
5 NEW SYSTEM.

6 A. DURING THE PRESIDENTIAL ELECTION?

7 Q. WELL, IN ANY ELECTION. THE REQUIRED STEPS --
8 SORRY.

9 THE COURT: WHY DON'T YOU ASK YOUR
10 COMPLETE QUESTION AGAIN AND THEN HE WILL ANSWER.
11 BY MR. FIELD:

12 Q. IN ANY ELECTION CYCLE, NOT IN A SPECIFIC
13 ELECTION CYCLE, THE STEPS REQUIRED TO TRANSITION TO AND
14 ADMINISTER AN ELECTION WITH A NEW SYSTEM.

15 A. WELL, FIRST, I WOULD NEED TO KNOW WHAT TYPE OF
16 SYSTEM WE WERE GOING TO BE USING, WHAT COMPONENTS COME
17 WITH THAT SYSTEM, WHETHER OR NOT WE CAN HOUSE THAT
18 SYSTEM AND THEN PROCEED FROM THERE.

19 Q. AND ONCE YOU HAVE THAT INFORMATION SAY IN 2019
20 WHEN THE BOARD OF ELECTIONS SELECTED THE ES&S
21 EXPRESSVOTE XL, WHAT ARE THE STEPS YOU GO THROUGH AT
22 THAT POINT TO THE ELECTION WHEN YOU ARE FIRST USING IT?

23 A. WELL, JUST AS I MENTIONED EARLIER, WE HAD TO
24 PROCURE -- THE COMMISSIONER HAD TO PROCURE A WAREHOUSE
25 THAT WAS CLIMATE CONTROLLED, SEALED, THE FLOORS WERE

1 SEALED TO KEEP THE DUST DOWN. ONCE WE DID THAT, WE HAD
2 TO START IMPLEMENTING THE TRAINING PROCESS AS FAR AS
3 TRAINING OUR EMPLOYEES, AFTER THAT TRAINING THE PUBLIC.
4 AND MOST IMPORTANTLY THE 8,000 POLL WORKERS THROUGHOUT
5 THE CITY.

6 BY THE COURT:

7 Q. I'M SORRY, SIR, I DIDN'T MEAN TO INTERRUPT YOU.
8 DID YOU HAVE MORE TO SAY?

9 A. NO, I AM FINE.

10 Q. YOU WERE HERE FOR MR. -- THE ES&S EMPLOYEE?

11 MR. WIYGUL: BAUMERT, YOUR HONOR.

12 BY THE COURT:

13 Q. YOU WERE HERE FOR MR. BAUMERT'S TESTIMONY?

14 A. YES, SIR.

15 Q. DO YOU KNOW WHO WENT TO OMAHA FROM THE CITY FOR
16 TRAINING IN THE USE OF THE MACHINES?

17 A. AS FAR AS --- WHEN YOU SAY USE OF THE MACHINES,
18 YOU MEAN REPAIRING THEM?

19 Q. WHAT HE DESCRIBED WAS THAT CITY REPRESENTATIVES
20 WERE INSTRUCTED ABOUT HOW THE MACHINE WORKS AND THEN
21 THEY TAUGHT THE ACTUAL --

22 A. THEY ACTUALLY CAME TO PHILADELPHIA.

23 Q. THEY DID?

24 A. YES, SIR.

25 Q. AND HOW MANY PEOPLE DID THEY INSTRUCT DIRECTLY?

1 A. I BELIEVE 18 OF THEM WERE TECHNICIANS.

2 Q. AND THOSE 18 IN TURN INSTRUCTED OTHERS?

3 A. YES.

4 Q. AND HOW LONG DID THAT PROCESS TAKE, IF YOU KNOW?

5 A. WELL, ACTUALLY WE DID TWO CLASSES. WE DID ONE
6 -- WE DID CLASSES IN THE SUMMER, WHICH NORMALLY YOU ONLY
7 DO -- IN A PRIMARY ELECTION WE WILL DO A SET OF CLASSES,
8 OVER 100 TRAININGS, BUT THIS TIME WE DID IT IN THE
9 SUMMER AND THEN WE DID IT ALSO IN THE FALL FOR THE FALL
10 ELECTION.

11 Q. HOW MANY DAYS OR WEEKS DID THE TRAINING TAKE IN
12 THE SUMMER?

13 A. IN THE SUMMER, IT TOOK CLOSE TO 6 WEEKS, 6 TO
14 8 WEEKS.

15 Q. AND THEN FOR THE GENERAL ELECTION HOW LONG?

16 A. SAME THING.

17 Q. SAME THING?

18 A. IT'S OVER 100 TRAININGS EACH.

19 Q. OVER 100 TRAININGS, YOU MEAN OVER 100 SESSIONS?

20 A. YES, SIR.

21 THE COURT: OKAY.

22 BY MR. FIELD:

23 Q. OKAY. SO MR. LYNCH, YOU WERE TALKING ABOUT
24 TRAININGS AND I THINK YOU MENTIONED TRAINING EMPLOYEES,
25 THE PUBLIC AND THE 8,000 BOARD WORKERS?

1 A. YES.

2 Q. AND WHO ARE, GENERALLY SPEAKING, THESE 8,000
3 BOARD WORKERS?

4 A. THEY ARE THE PEOPLE THAT RUN THE DAY-TO-DAY
5 OPERATIONS ON ELECTION DAY, WHICH ACTUALLY A LOT OF THEM
6 ARE ELDERLY, BUT THEY ARE DEDICATED TO THEIR WORK.

7 THE COURT: I KNOW JUST HOW THEY FEEL.
8 THESE ARE THE PEOPLE THAT I SEE WHEN I GO INTO THE
9 POLLING PLACE?

10 THE WITNESS: YES.

11 THE COURT: OKAY.

12 THE WITNESS: AND WE ALSO, IF YOU DON'T
13 MIND. WE ALSO DID OVER 837 PUBLIC TRAININGS WITH THE
14 MACHINE. WE TOOK THE MACHINES THROUGHOUT THE CITY AND
15 WE ARE STILL DOING IT TODAY.

16 THE COURT: MR. FIELD.

17 BT MR. FIELD:

18 Q. AND IN ADDITION TO THE THINGS YOU JUST
19 IDENTIFIED, ARE THERE ANY ACTIVITIES IN RELATION TO THE
20 ACTUAL VOTING PLACES THAT YOU HAVE TO GO THROUGH?

21 A. YES. WE WENT THROUGH -- WE CHECKED OVER 800
22 POLLING PLACES TO MAKE SURE THAT THEY CAN ACCOMMODATE
23 THE NEW VOTING SYSTEM, BECAUSE THE MACHINES WERE JUST A
24 LITTLE WIDER THAN THE OTHER MACHINES, AND THEY CAN'T BE
25 CARRIED UP STEPS LIKE THE OTHER ONES WERE. SO WE HAD TO

1 FIND POLLING PLACES THAT WERE ABLE TO ACCOMMODATE THAT
2 MACHINE. AND IN SOME CASES, WE HAD TO CHANGE THE
3 POLLING PLACES AND NOTIFY THE PUBLIC.
4 BY THE COURT:

5 Q. MR. LYNCH, IS IT YOUR AGENCY THAT IS RESPONSIBLE
6 FOR THE PLACING OF THE SEALS ON THE MACHINES?

7 A. YES, SIR.

8 Q. AND WHEN THE MACHINES ARRIVED IN PHILADELPHIA,
9 AND YOU HAVE DESCRIBED IT THAT THEY ARRIVED DIFFERENT
10 NUMBERS AT DIFFERENT TIMES, IS THAT A FAIR STATEMENT?

11 A. YES, THEY CAME IN TRACTOR TRAILERS.

12 Q. TRACTOR TRAILERS. WERE THEY SEALED IN THE
13 TRAILERS IN ANY WAY?

14 A. THE ACTUAL TRUCK DOORS WERE SEALED WITH AN
15 ALUMINUM SEAL THAT HAD A NUMBER ON IT.

16 Q. BUT THE MACHINES THEMSELVES WERE NOT?

17 A. NO, THEY WERE NESTED TOGETHER AND THEY HAD
18 PLASTIC BAGS ON THEM.

19 Q. YOUR PEOPLE PUT THE SEALS IN?

20 A. YES.

21 Q. AND THE SEALS WE SAW, I THINK MR. LIEB DESCRIBED
22 THEM ACCURATELY, A SMALL PLASTIC SEAL THAT IS LOOPED
23 WITH A NUMBER ON IT?

24 A. YES.

25 Q. AND IT CAN'T BE OPENED OTHER THAN BY BREAKING

1 THEM?

2 A. YES, TRUE.

3 Q. AND WHO INSTALLED THOSE?

4 A. OUR TECHNICIANS.

5 Q. AND WHEN DO THEY DO THAT?

6 A. THEY ARE INSTALLED -- ONCE THE LOGIC AND
7 ACCURACY TEST IS DONE, THEY ARE INSTALLED AND RECORDED
8 BY US.

9 Q. WHAT IS THE LOGIC AND ACCURACY TEST?

10 A. SO ONCE THE BALLOT IS ACCEPTED -- EXCUSE ME,
11 ONCE THE BALLOT IS ACCEPTED, OUR EMPLOYEES HAVE A SCRIPT
12 THAT THEY GO BY, AND THEY TEST THE FUNCTIONALITY OF THE
13 MACHINE AND THE BUTTONS AND MAKE SURE THAT EVERYBODY
14 GETS A VOTE.

15 Q. WHY DON'T WE BACK UP FOR A MINUTE. THE MACHINES
16 HAVE ARRIVED IN THE CITY AND THEY ARE IN THE TWO
17 WAREHOUSES OR ARE BEING DELIVERED TO THE TWO WAREHOUSES.
18 WHAT DOES YOUR AGENCY DO WITH THE MACHINES ONCE THEY GET
19 HERE?

20 A. OKAY. SO ONCE THEY GET THERE AND WE RECORD THE
21 SEAL NUMBER OFF THE TRUCK, ONCE THEY GET THERE, WE ROLL
22 THEM INTO A CERTAIN PART OF THE WAREHOUSE AND WE START
23 THE USER ACCEPTANCE TEST. THAT'S DIFFERENT FROM THE
24 L&A. THE USER ACCEPTANCE TEST IS A TEST, A SCRIPT THAT
25 WE USE TO CHECK THE SERIAL NUMBERS ON THE MACHINE, THE

1 FUNCTIONALITY OF THE MACHINE AND CHECKING IT FOR DAMAGES
2 AND STUFF LIKE THAT.

3 Q. WHEN YOU SAY THE FUNCTIONALITY, WHETHER IT
4 WORKS?

5 A. YES.

6 Q. AND HOW LONG DOES THAT TAKE FOR A PARTICULAR
7 MACHINE?

8 A. IT WAS TAKING US LIKE 45 MINUTES TO DO IT.

9 Q. FOR EACH MACHINE?

10 A. FOR EACH MACHINE.

11 Q. OKAY, GO ON.

12 A. AND THEN ONCE THAT WAS -- THE UAT WAS TESTED,
13 AND IF WE EVER FOUND ANY PROBLEMS WE WOULD PUT THEM
14 ASIDE AND WE WOULD PUT THEM IN WHAT WE CALL SICK BAY.
15 AND THEN ONCE THEY WERE DONE, WE WOULD NEST THEM
16 TOGETHER, THE MACHINES, THEY HAVE -- THE LEGS ARE
17 SPREAD. THEY WERE LIKE WIDE WHERE YOU CAN NEST THEM
18 TOGETHER, AND WE WOULD LOCK THEM UP.

19 Q. OKAY. AND WOULD ANYONE HAVE ANY REASON TO HAVE
20 ACCESS TO MACHINES, THOSE MACHINES, THAT ARE LOCKED UP
21 BETWEEN THE TIME THEY ARE LOCKED UP AND THE TIME THEY
22 ARE TAKEN TO THE POLLING PLACE?

23 A. NOBODY FROM THE PUBLIC.

24 Q. HOW ABOUT FROM YOUR ORGANIZATION?

25 A. WE WERE JUST IN THERE DURING WORKING HOURS,

1 THAT'S IT.

2 Q. OKAY. AND WHEN ARE THE SEALS PUT ON THE
3 MACHINES?

4 A. THE SEALS ARE PUT ON THE MACHINES AFTER WE DO
5 THE LOGIC AND ACCURACY TEST.

6 Q. THERE'S A UNIQUE SEAL FOR EACH MACHINE?

7 A. YES, SIR.

8 Q. WHEN THE MACHINES ARE TAKEN TO THE POLLING
9 PLACES, DOES SOMEONE FROM YOUR AGENCY CHECK TO MAKE SURE
10 THE INTEGRITY OF THE SEAL HAS NOT BEEN BROKEN?

11 A. NO, BUT THE BOARD WORKERS ARE INSTRUCTED TO CALL
12 US IF ONE OF THE SEALS ARE BROKEN.

13 Q. IN THE NOVEMBER 2019 ELECTION, WERE ANY OF THE
14 SEALS BROKEN ON ANY OF THE MACHINES?

15 A. WE DIDN'T HAVE ANY REPORTS OF.

16 Q. OKAY.

17 THE COURT: OKAY. GO ON, MR. FIELD.

18 BY MR. FIELD:

19 Q. MR. LYNCH, JUST ONE GENERAL QUESTION. DO YOU
20 KNOW WHEN PHILADELPHIA LAST USED A PAPER BALLOT SYSTEM
21 IN AN ELECTION?

22 A. I WOULD SAY OVER HALF A CENTURY. I DON'T EVER
23 RECALL THEM USING THEM AT A POLLING PLACE.

24 MR. FIELD: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: I ASSUME THE COMMONWEALTH HAS

1 NOTHING?

2 MR. WIYGUL: NO QUESTIONS FROM DEFENSE,
3 YOUR HONOR.

4 THE COURT: OKAY, MR. LIEB.

5 MR. LIEB: A FEW QUESTIONS PICKING UP ON
6 SOME OF THE SECURITY-RELATED QUESTIONS THAT THE COURT
7 ASKED YOU, SIR.

8 REDIRECT EXAMINATION

9 BY MR. LIEB:

10 Q. DO YOU RECALL BEING IN THE COURTROOM FOR MR.
11 BAUMERT'S TESTIMONY REGARDING WHETHER ES&S REQUIRES KEYS
12 THAT ARE UNIQUE TO EACH MACHINE?

13 A. YES.

14 Q. DOES PHILADELPHIA HAVE UNIQUE KEYS FOR EVERY
15 MACHINE?

16 A. THEY USE THE SAME -- IT'S A KEYED-ALIKE MACHINE.
17 IT'S KEYED ALIKE, WE USE THE SAME KEY FOR EVERY MACHINE.

18 Q. SAME KEY FOR EVERY MACHINE?

19 A. YES.

20 Q. APPROXIMATELY HOW MANY PEOPLE -- WELL,
21 WITHDRAWN.

22 YOU SAID IN RESPONSE TO ONE OF THE
23 COURT'S QUESTIONS THAT WITH REGARD TO THE SPACE WHERE
24 THE MACHINES ARE KEPT NESTED --

25 A. YES.

1 Q. -- SOMETHING TO THE EFFECT OF, WE'RE JUST IN
2 THERE DURING WORKING HOURS. DO YOU RECALL THAT
3 TESTIMONY?

4 A. YES.

5 Q. WHEN YOU SAY "WE'RE," YOU MEAN EMPLOYEES OF THE
6 BOARD OF ELECTIONS?

7 A. YES.

8 Q. APPROXIMATELY HOW MANY PEOPLE HAVE ACCESS TO
9 THAT SPACE?

10 A. AS FAR AS KEY-WISE?

11 Q. WELL --

12 A. THE ACCESS TO THAT SPACE WOULD BE FOUR OF US.

13 Q. OKAY. AND IN TERMS OF HOW MANY PEOPLE ARE IN
14 AND OUT OF THERE DURING THE WORKING DAY?

15 A. IT COULD BE UPWARDS FROM 18 TO 20 PEOPLE.

16 Q. WHERE DO YOU ACTUALLY GET THE GREEN PLASTIC
17 SEALS THAT WE HAVE BEEN TALKING ABOUT?

18 MR. FIELD: YOUR HONOR, I WOULD OBJECT TO
19 THIS LINE OF QUESTIONING.

20 THE COURT: NO, I WILL LET HIM ASK.

21 GO AHEAD.

22 THE WITNESS: WE PURCHASED THEM FROM A
23 VENDOR.

24 BY MR. LIEB:

25 Q. WHAT VENDOR?

1 THE COURT: ARE YOU GOING TO ASK HIM WHAT
2 PROCESS IS USED, BEST VALUE OR?

3 THE WITNESS: I DON'T KNOW. IT'S LIKE
4 FEISS AND SON. I'M NOT SURE. I FORGET THE NAME OF THE
5 COMPANY WE PURCHASE THEM FROM.

6 MR. FIELD: YOUR HONOR, IF I MIGHT JUST
7 FINISH MY OBJECTION FOR THE RECORD, PLEASE?

8 THE COURT: YES.

9 MR. FIELD: AS THE COURT NOTED WHEN ES&S
10 WAS BEING QUESTIONED ABOUT THE LOCATION OF THEIR
11 WAREHOUSES, PLAINTIFF'S THEORY IN THIS CASE IS THAT
12 SOMEBODY COULD GAIN AN INAPPROPRIATE ACCESS TO THE
13 MACHINES. I THINK THE DETAILS OF THE CITY'S PROCESSES
14 COULD REVEAL INFORMATION --

15 THE COURT: HE HAS NOT SAID ANYTHING THAT
16 COMPROMISES SECURITY YET. HE SAYS THAT THE CITY BUYS
17 THE SEALS AND HE IS NOT SURE FROM WHOM. I DON'T REALLY
18 THINK THAT'S -- THAT'S THE ATOM BOMB SECRET.

19 MR. FIELD: I APOLOGIZE, YOUR HONOR, I
20 WAS JUST OBJECTING TO THE QUESTION ABOUT WHERE THE CITY
21 BUYS ITS SEALS.

22 THE COURT: HE DOES NOT KNOW, SO IT
23 DOESN'T MATTER.

24 GO AHEAD.

25 BY MR. LIEB:

1 Q. TO YOUR KNOWLEDGE, ARE THE SEALS A COMMERCIALY
2 AVAILABLE PRODUCT ON THE MARKET?

3 THE COURT: DO YOU KNOW?

4 THE WITNESS: I AM SURE.

5 THE COURT: YOU ARE SURE, OKAY.

6 BEFORE YOU FINISH, HOLD ON.

7 BY THE COURT:

8 Q. WHEN THE MACHINE GETS TO THE POLLING PLACE --

9 A. YES, SIR.

10 Q. -- THE POLL WORKERS PRESUMABLY HAVE BEEN TRAINED
11 THROUGH THE 100 TRAINING SESSIONS YOU DESCRIBED?

12 A. YES.

13 Q. IS THAT YES?

14 A. YES.

15 Q. AND WHAT DO THE POLL WORKERS DO WITH THE
16 MACHINES -- HOW SOON BEFORE THE NOVEMBER ELECTION DO THE
17 MACHINES GET TO THE POLLING PLACE?

18 A. LIKE I SAID, USUALLY 10 DAYS WOULD BE -- 10 DAYS
19 OUT.

20 Q. SO THEY GET THERE --

21 A. WE START 10 DAYS OUT TO DELIVER THEM, BUT A LOT
22 OF THE POLLING PLACES COULD BE LIKE A CHURCH OR
23 RECREATION CENTER OR A SCHOOL. AND A LOT OF THEM
24 REQUEST THAT WE BRING THEM MONDAY AND TAKE THEM OUT
25 WEDNESDAY.

1 Q. AND SO WHEN THEY GET TO THE POLLING PLACE, THE
2 POLLING PLACE NEAR MY HOUSE IS A CHURCH. ARE THE SEALS
3 ON THE MACHINES?

4 A. YES, SIR.

5 Q. AND WHEN ARE THE SEALS REMOVED?

6 A. ELECTION DAY.

7 Q. AND DOES YOUR STAFF AT THAT POINT, OTHER THAN
8 PLUGGING THE MACHINE IN AND PUTTING IN WHAT I WILL CALL
9 THE PIN CODE THAT WE SAW MR. BAUMERT DO, DID THEY DO
10 ANYTHING ELSE WITH THE MACHINES?

11 A. WHEN YOU SAID THE BOARD, IT WOULD BE ACTUALLY
12 THE JUDGE OF ELECTIONS, THE BOARDS THAT WORK ON ELECTION
13 DAY. SO WHEN THEY COME IN, THEY ARE INSTRUCTED. THERE
14 IS A SEAL CARD IN THE ELECTION MATERIALS BOX, AND THEY
15 ARE INSTRUCTED TO RECORD THOSE SEALS ON THE SEAL CARD.

16 Q. AND DO THEY RUN ANY CHECK OR DO ANYTHING WITH
17 THE MACHINE OTHER THAN TAKE THE SEAL OFF AND RECORD IT
18 AND PLUG IT IN?

19 A. AND THEN POWER IT UP AND PUT THEIR CODE IN.

20 THE COURT: OKAY.

21 BY MR. LIEB:

22 Q. VERY BRIEF FOLLOW UP WHAT WAS JUST DISCUSSED.

23 THE COURT: GO AHEAD, GO AHEAD.

24 BY MR. LIEB:

25 Q. THE PEOPLE WHO ARE ACTUALLY BREAKING THE SEAL

1 AND TURNING ON THE MACHINES ON THE DAY OF VOTING, THEY
2 ARE NOT BOARD OF ELECTIONS EMPLOYEES, RIGHT?

3 A. NO, THEY ARE ELECTED FROM THE VOTERS OF
4 PHILADELPHIA. IF THEY ARE NOT ELECTED, THEY ARE COURT
5 APPOINTED.

6 Q. THEY ARE BASICALLY PEOPLE -- THEY ARE ELECTED?

7 A. YES, THEY SIGN AN OATH ON ELECTION DAY THAT
8 MENTIONS --

9 THE COURT: WHAT DO THEY SWEAR TO?

10 THE WITNESS: THEY SWEAR TO CONDUCT A
11 FAIR ELECTION ON ELECTION DAY.

12 THE COURT: OKAY.

13 BY MR. LIEB:

14 Q. AND JUST TO BE CLEAR, THE PEOPLE WHO WOULD BE
15 RESPONSIBLE FOR ALERTING THE BOARD IN THE EVENT THE SEAL
16 WERE BROKEN ARE THESE PERSONS, CORRECT?

17 A. YES, SIR.

18 MR. LIEB: THAT'S ALL I HAVE.

19 THE COURT: THANK YOU SO VERY MUCH, MR.
20 LYNCH.

21 THE WITNESS: THANK YOU.

22 THE COURT: IS THERE ANYTHING MORE YOU
23 WISH TO PRESENT, MR. LIEB?

24 MR. LIEB: NO, YOUR HONOR.

25 THE COURT: MR. FIELD?

1 MR. FIELD: YOUR HONOR, I HAVE ONE
2 HOUSEKEEPING MATTER.

3 THE COURT: WAIT, BEFORE WE GET TO
4 HOUSEKEEPING, ANY OTHER WITNESSES?

5 MR. FIELD: THIS IS WITH REFERENCE TO
6 POTENTIAL WITNESSES. WE CAN DO THIS AFTER.

7 THE COURT: MR. WIYGUL, DOES THE
8 COMMONWEALTH HAVE ANY ADDITIONAL WITNESSES, ANY -- I
9 GUESS IT WOULD BE REBUTTAL WITNESSES?

10 MR. WIYGUL: WE DO NOT HAVE ANY REBUTTAL
11 WITNESSES, YOUR HONOR. THERE IS ONE EXHIBIT THAT I
12 WOULD MOVE INTO EVIDENCE AND I DON'T THINK IT WAS MOVED
13 IN YET.

14 THE COURT: LET'S GO WITH MR. FIELD AND
15 THEN WE WILL GO TO YOUR EXHIBIT.

16 YES, MR. FIELD.

17 MR. FIELD: THANK YOU, YOUR HONOR. SO
18 YOUR HONOR ON WEDNESDAY ASKED A QUESTION WHICH THE CITY
19 HAD NOT INTERPRETED TO BE PART OF YOUR HONOR'S
20 DECEMBER 20TH ORDER REGARDING THE EXPENDITURES ON THE
21 ELECTION SYSTEM.

22 THE COURT: I THOUGHT WE HAD THAT
23 INFORMATION. WE HAVE THE CONTRACT, IT WAS \$29 MILLION
24 AND CHANGE.

25 MR. FIELD: WE HAD OFFERED A STIPULATION

1 FROM -- OF ACTUAL ADDITIONAL EXPENDITURES. I JUST
2 WANTED TO ALERT THE COURT AND PLAINTIFF THAT IF THEY
3 REFUSE TO STIPULATE, IF THE COURT WANTED ADDITIONAL
4 INFORMATION, WE CAN PUT IN AN AFFIDAVIT, MAKE SOMEBODY
5 AVAILABLE FOR EXAMINATION, BUT WE DON'T SEE THE NEED TO
6 DO SO, YOUR HONOR.

7 THE COURT: MR. LIEB, YOU ARE NOT GOING
8 TO STIPULATE TO THE ADDITIONAL EXPENDITURES?

9 MR. LIEB: JUDGE, I HAVE NO KNOWLEDGE
10 WHATSOEVER OF THIS. IF THERE IS SOME PUBLIC RECORD THAT
11 THEY CAN OFFER, I AM CERTAINLY NOT GOING TO OBJECT TO IT
12 BEING RECEIVED IN EVIDENCE. I AM JUST A LITTLE
13 UNCOMFORTABLE SIGNING A DOCUMENT --

14 THE COURT: YOU JUST DON'T BELIEVE MR.
15 FIELD.

16 MR. LIEB: NO, I BELIEVE MR. FIELD. I
17 DON'T NECESSARILY BELIEVE THE CITY BUREAUCRACY THAT GAVE
18 HIM THE INFORMATION, TO BE HONEST WITH YOU.

19 THE COURT: I WANT YOU TO BE HONEST.
20 THANK YOU, THAT'S EXTREMELY HELPFUL, MR. LIEB.

21 I REALLY DON'T WANT ANY ADDITIONAL
22 EVIDENCE SUBMITTED. THE COMMISSIONER IS STILL HERE AND
23 MR. LYNCH IS STILL HERE. BETWEEN THE TWO OF THEM YOU
24 CAN'T -- THEY DON'T KNOW WHAT THESE -- I THOUGHT THE
25 COMMISSIONER ACTUALLY TESTIFIED TO SOME OF THOSE

1 EXPENSES WHEN MR. LIEB, WHO WON'T STIPULATE TO IT, ASKED
2 HER ABOUT THAT.

3 MR. FIELD: I BELIEVE THEY MAY HAVE SOME
4 GENERAL KNOWLEDGE, YOUR HONOR, WHEN YOU HAD ASKED FOR A
5 STIPULATION. THE ACTUAL EXPENDITURES IS OBVIOUSLY THE
6 PURVIEW OF THE FINANCE DEPARTMENT.

7 THE COURT: ANY EXECUTIVE GETS HER
8 KNOWLEDGE ALMOST INVARIABLY FROM OTHER PEOPLE. I DON'T
9 THINK THE COMMISSIONER WAS RUNNING THE CASH REGISTER OR
10 ADDING MACHINE HERSELF.

11 WHY DON'T WE TAKE A SHORT BREAK AND
12 PERHAPS DURING THAT TIME EITHER MR. LYNCH OR THE
13 COMMISSIONER CAN FAMILIARIZE HERSELF/HIMSELF WITH WHAT
14 THOSE EXPENDITURES WERE AND WE CAN RECALL EITHER WITNESS
15 TO TESTIFY.

16 MR. FIELD: THANK YOU, YOUR HONOR.

17 THE COURT: OKAY, WE WILL TAKE A SHORT
18 RECESS.

19 (RECESS TAKEN.)

20 THE COURT: ALL RIGHT, PLEASE BE SEATED.

21 MR. FIELD.

22 MS. WALSH: YOUR HONOR --

23 THE COURT: MS. WALSH.

24 MS. WALSH: GOOD MORNING AGAIN, YOUR
25 HONOR. YOUR HONOR, AT THIS POINT THE CITY OF

1 PHILADELPHIA RECALLS COMMISSIONER NESMITH-JOYNER TO THE
2 STAND.

3 THE COURT: WELCOME BACK, COMMISSIONER.
4 YOU ARE STILL UNDER OATH.

5 (MONIQUE NESMITH-JOYNER, HAVING BEEN
6 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS.)

7 MS. WALSH: MAY I PROCEED, YOUR HONOR?

8 THE COURT: YOU MAY.

9 DIRECT EXAMINATION

10 BY MS. WALSH:

11 Q. AND GOOD MORNING AGAIN, COMMISSIONER.

12 A. GOOD MORNING.

13 Q. COMMISSIONER, HAVE YOU HAD AN OPPORTUNITY TO
14 FAMILIARIZE YOURSELF WITH ANY ADDITIONAL EXPENDITURES
15 MADE BY THE CITY OF PHILADELPHIA IN RELATION TO THE ES&S
16 VOTING SYSTEM FOR THE YEAR 2019?

17 A. YES.

18 Q. AND WHERE DID YOU OBTAIN THAT INFORMATION FROM?

19 A. I JUST SPOKE WITH THE DEPUTY DIRECTOR OF
20 FINANCE.

21 Q. AND COMMISSIONER, CAN YOU PLEASE DETAIL FOR THE
22 COURT SOME OF THOSE ADDITIONAL EXPENDITURES MADE BY THE
23 CITY?

24 A. YES. MAY I REFER TO THIS? I JOTTED DOWN SOME
25 NOTES.

1 THE COURT: YOU MAY.

2 THE WITNESS: THANK YOU. YOU ARE
3 SPECIFICALLY REFERRING TO ADDITIONAL EXPENDITURES
4 OUTSIDE THE CITY?

5 BY MS. WALSH:

6 Q. OUTSIDE, THAT'S CORRECT.

7 A. SO I HAVE 1.2 MILLION FOR THE TRANSITION
8 CONSULTANT. I UNDERSTAND THE CITY WANTED TO CONSULT
9 WITH -- TO CONTRACT, EXCUSE ME, WITH A CONSULTANT WHO
10 HAD DONE IMPLEMENTATION OF NEW SYSTEMS IN OTHER AREAS,
11 SINCE THIS WAS NEW TO THE CITY.

12 THERE IS 1.6 MILLION IN RELATED SUPPLIES,
13 WI-FI THAT NEEDED TO BE RUN, OF THE GROUNDING OF THE
14 ELECTRICAL WIRES AND SUCH; 2 MILLION IN THE ANNUAL
15 RELEASE COST; AND THEN 66,000 IN TENANT IMPROVEMENT
16 COSTS.

17 MS. WALSH: I HAVE NO FURTHER QUESTIONS
18 AT THIS POINT, YOUR HONOR.

19 THE COURT: MR. LIEB.

20 CROSS-EXAMINATION

21 BY MR. LIEB:

22 Q. DO YOU HAVE OR WERE YOU PROVIDED WITH ANY
23 INFORMATION REGARDING THE AMOUNT OF MONEY DUE UNDER THE
24 CONTRACT THAT THE CITY OF PHILADELPHIA HAS ACTUALLY
25 PAID?

1 THE COURT: I COULDN'T HEAR THE LAST PART
2 OF YOUR QUESTION.

3 BY MR. LIEB:

4 Q. THE AMOUNT OF MONEY DUE UNDER THE CONTRACT THAT
5 HAS ACTUALLY BEEN PAID. SO THERE HAS BEEN EVIDENCE
6 INTRODUCED ABOUT AND INFORMATION ABOUT HOW MUCH THE
7 CONTRACT IS FOR.

8 A. YES.

9 Q. DO YOU HAVE OR WERE YOU GIVEN INFORMATION ABOUT
10 HOW MUCH MONEY THE CITY OF PHILADELPHIA HAS ACTUALLY
11 PAID?

12 A. HAS PAID TO THE ES&S CONTRACT?

13 Q. YES.

14 A. YES. IT WAS 20 MILLION.

15 MR. LIEB: NOTHING FURTHER.

16 THE COURT: OKAY. THANK YOU AGAIN,
17 COMMISSIONER.

18 THE WITNESS: THANK YOU.

19 THE COURT: DOES ANYONE HAVE ANY
20 ADDITIONAL EVIDENCE HE OR SHE WOULD LIKE TO PRESENT.
21 LET'S START WITH WITNESSES, ANY ADDITIONAL WITNESSES?

22 MS. WALSH: NOTHING FROM THE CITY, YOUR
23 HONOR, THANK YOU.

24 MR. WIYGUL: NOTHING FROM THE DEFENDANTS,
25 YOUR HONOR.

1 MR. LIEB: NO.

2 THE COURT: ANY ADDITIONAL EVIDENCE?

3 MR. WIYGUL: YOUR HONOR, DEFENDANTS WOULD
4 LIKE TO MOVE INTO EVIDENCE JX 22 THAT IS REFERENCED IN
5 THE FACTUAL STIPULATIONS AT STIPULATION 27. THAT IS,
6 YOUR HONOR, IF YOU RECALL THAT THE -- THERE WAS THAT
7 FREEDOM TO TINKER ARTICLE THAT DR. HALDERMAN LINKED TO
8 HIS PORTION OF THE OCTOBER 9, 2018 E-MAIL THAT MR.
9 MAAZEL SENT TO DEFENDANTS. AND THAT ARTICLE ITSELF
10 LINKED TO A VIDEO AND THIS IS THAT VIDEO THAT WAS LINKED
11 TO THAT ARTICLE.

12 MR. LIEB: I CAN'T REMEMBER, HONESTLY,
13 JUDGE, WHAT THE STATE OF THE TESTIMONY WAS ABOUT WHETHER
14 THAT ARTICLE WAS -- OR THE VIDEO WAS OR WAS NOT WATCHED,
15 SO I GUESS ON THAT BASIS I WOULD OBJECT.

16 THE COURT: I WILL OVERRULE THE
17 OBJECTION. IT WILL BE ADMITTED.

18 (JOINT EXHIBIT 22 IS ADMITTED INTO
19 EVIDENCE.)

20 THE COURT: ANYTHING ELSE?

21 MR. WIYGUL: FOR THE RECORD, YOUR HONOR,
22 WE HAVE PROVIDED THAT TO THE COURT AND WE HAVE PROVIDED
23 IT AS WELL TO THE PLAINTIFFS, BUT THAT OBVIOUSLY IS NOT
24 IN THE BINDER SINCE IT'S A FLASH DRIVE THAT WE SUBMITTED
25 TO THE COURT LAST WEEK.

1 THE COURT: UNDERSTOOD.

2 DO YOU HAVE ANY ADDITIONAL EVIDENCE YOU
3 WISH TO PRESENT, MR. LIEB?

4 MR. LIEB: NO, JUDGE.

5 THE COURT: OKAY, THEN, IS THERE ANYTHING
6 MORE FOR US TO DO OTHER THAN SET UP A SCHEDULE FOR THE
7 SUBMISSION OF PROPOSED FINDINGS AND CONCLUSIONS?

8 MR. WIYGUL: I DON'T BELIEVE SO, YOUR
9 HONOR.

10 MR. LIEB: NOR DO I.

11 THE COURT: OKAY. HAVE THE PARTIES BEEN
12 ASKING FOR DAILY COPIES OR NOT?

13 MR. LIEB: WE HAVE NOT.

14 MR. WIYGUL: NOR HAVE WE.

15 THE COURT: YOU ARE GOING TO NEED A COPY
16 FOR ALL THREE DAYS OF THE HEARING. AND THE PRICE YOU
17 WILL PAY WILL TURN ON HOW QUICKLY YOU WANT IT.

18 SO ACTUALLY I HAVE TO ASK OUR
19 STENOGRAPHER. DO YOU KNOW WHAT THE SCHEDULE OF PAYMENT
20 IS?

21 THE STENOGRAPHER: YES. I E-MAILED THE
22 TWO LADIES ON THE END WHAT THE PRICES WERE.

23 THE COURT: WHY DON'T YOU IDENTIFY
24 YOURSELF FOR THE RECORD.

25 MS. MATTHIAS: CHRISTINA MATTHIAS FOR THE

1 DEFENDANTS, YOUR HONOR.

2 THE COURT: NICE TO SEE YOU AGAIN, MS.

3 MATTHIAS.

4 MS. MATTHIAS: NICE TO SEE YOU AS WELL.

5 SO IT'S GOING TO BE 3.65 PER PAGE FOR THE
6 30 DAY. THERE'S A 14-DAY OF 4.25 PER PAGE, SEVEN DAY
7 WOULD BE 4.85 PER PAGE AND THE THREE DAY IS 5.45 PER
8 PAGE.

9 THE COURT: I WOULD PROPOSE THE SEVEN
10 DAYS. I REALLY DON'T WANT TO -- BECAUSE YOU ARE GOING
11 TO NEED SOME TIME. ALTHOUGH YOU CAN CERTAINLY GET
12 STARTED NOW, YOU ARE GOING TO STILL NEED SOME TIME AFTER
13 YOU GET THE TRANSCRIPTS. UNLESS THE PARTIES ARE
14 OPPOSED, I WOULD PROPOSE THAT YOU GET COPY WITHIN SEVEN
15 DAYS AND SUBMIT PROPOSED FINDINGS AND CONCLUSIONS
16 14 DAYS AFTER THAT. IS THAT DOABLE?

17 MR. LIEB: I THINK SO.

18 MR. WIYGUL: SO 21 DAYS FROM TODAY?

19 THE COURT: TODAY, YES. 21 DAYS, YOU CAN
20 GET STARTED TODAY. I DON'T KNOW IF THE CITY PLANS ON --
21 WHY DON'T WE ERR ON THE SIDE OF CAUTION. IS THAT
22 DOABLE, MR. FIELD?

23 MR. FIELD: THAT IS FOR THE CITY, YOUR
24 HONOR.

25 THE COURT: I DON'T WANT ANY RESPONSIVE

1 PLEADINGS AFTER THAT. SO THAT THE PROPOSED FINDINGS ARE
2 WHATEVER LENGTH THEY ARE. AS FOR THE CONCLUSIONS OF
3 LAW, I'M GOING TO LIMIT EACH PARTY TO 25 PAGES, WHICH I
4 THINK IS MORE THAN ENOUGH TO ADDRESS, ESPECIALLY IN
5 LIGHT OF EVERYTHING THAT HAS BEEN SUBMITTED AND ALL THE
6 BRIEFING THAT'S BEEN DONE, THERE'S THE MOTION TO ENFORCE
7 THE CONTRACT. I THINK 25 PAGES IS QUITE SUFFICIENT.

8 IS THERE ANYTHING ELSE ANYBODY WOULD LIKE
9 TO PUT ON THE RECORD?

10 MR. LIEB?

11 MR. LIEB: NO, THANK YOU, JUDGE.

12 THE COURT: MR. WIYGUL?

13 MR. WIYGUL: NO, YOUR HONOR. IF I CAN
14 JUST CLARIFY, THOSE 25 PAGES WOULD BE THE ACTUAL
15 CONCLUSIONS THAT THE PARTIES WOULD URGE THE COURT TO --

16 THE COURT: THE CONCLUSIONS, NOT THE
17 FACTUAL FINDINGS. THE FACTUAL FINDINGS ARE WHATEVER
18 LENGTH THEY ARE. IT'S A LEGAL BRIEF. IT'S JUST A LEGAL
19 MEMORANDUM OF NO MORE THAN 25 PAGES.

20 MR. WIYGUL: THANK YOU.

21 MR. LIEB: I APPRECIATE THE
22 CLARIFICATION.

23 MR. FIELD: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: OKAY, THEN MY THANKS TO ALL
25 COUNSEL FOR THEIR VERY HARD WORK ON THIS MATTER. WHEN

1 SOMETHING IS THIS WELL-PREPARED, AS THIS IS PREPARED AS
2 WELL AS THIS AS BEEN BY ALL THE LAWYERS, IT'S PERFECTLY
3 OBVIOUS, AND IT HAS BEEN PERFECTLY OBVIOUS TO ME THAT
4 YOU ALL WORKED VERY HARD. AND DON'T TELL MR. MAAZEL AND
5 MR. ARONCHICK I SAID THIS, THEIR EGOS ARE BIG ENOUGH.
6 SO THANK YOU.

7 ALL COUNSEL: THANK YOU, YOUR HONOR.

8 THE COURT: THANK YOU.

9 (COURT ADJOURNED.)

10

11

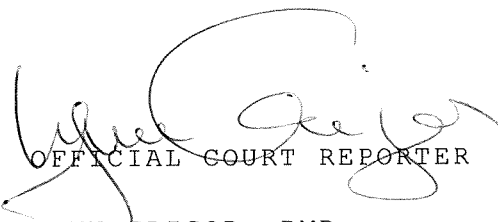
12 I CERTIFY THAT THE FOREGOING IS A CORRECT
13 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
14 ABOVE-ENTITLED MATTER.

15

16

2/26/20
DATE

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OFFICIAL COURT REPORTER

LYNN GLIGOR, RMR

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WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

5

MONIQUE NESMITH-JOYNER

6

BY MS. WALSH

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BY MR. LIEB

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8

JOSEPH LYNCH

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BY MR. LIEB

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BY MR. FIELD

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MONIQUE NESMITH-JOYNER

12

BY MS. WALSH

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BY MR. LIEB

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